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Islamic Commercial Law and Social Justice: Shari'ah-Compliant Companies, Workers' Rights, and the Living Wage

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ARTICLES

ISLAMIC COMMERCIAL LAW AND SOCIAL JUSTICE: *SHARI'AH*-COMPLIANT COMPANIES, WORKERS' RIGHTS, AND THE LIVING WAGE

SUSAN C. HASCALL[†]

"I will be against three persons on the Day of Resurrection . . . And one who employs a laborer and gets the full work done by him but does not pay him his wages."¹

عرقه يجف أن قبل، أجره الأجير أعطوا

The Prophet Muhammad (P.B.U.H.)

"The most virtuous Jihad is a word of truth in front of a tyrant."²

كَلِمَةُ حَقٍّ عِنْدَ سُلْطَانٍ جَائِرٍ أَفْضَلُ الْجِهَادِ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ

مَسْنَدُ الْإِمَامِ أَبِي حَنِيفَةَ مَا أَسْنَدَهُ الْإِمَامُ أَبُو حَنِيفَةَ رَحِمَهُ

المحدث السيوطي خلاصة حكم المحدث صحيح

The Prophet Muhammad (P.B.U.H.)

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¹ 3 SAHIH AL-BUKHARI, THE BOOK OF SALES AND TRADE 34:174, available at <http://sunnah.com/bukhari/34/174>. See generally Muzammil Siddiqi, *Rights of Workers in Islam*, THE ISLAM PATH (Aug. 20, 2006), <http://theislampath.com/smf/index.php?topic=3442.0>.

² Mu'jam Al-Kabeer 8002, *Hadith on Jihad: The Most Virtuous Jihad Is a Word of Truth in Front of a Tyrant*, DAILY HADITH ONLINE (Jan. 29, 2013), <http://www.dailyhadithonline.com/2013/01/29/hadith-on-jihad-the-most-virtuous-jihad-is-a-word-of-truth-in-front-of-a-tyrant/>.

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INTRODUCTION

In recent years, the number of businesses and financial institutions that claim to be *Shari'ah*-compliant, or to offer *Shari'ah*-compliant services, has increased exponentially.³ In fact, *Shari'ah*-compliant businesses now comprise a nearly trillion-dollar industry.⁴ *Shari'ah*-compliant companies structure their finances, contracts, and investments to comply with both the requirements of *Shari'ah* and the secular law applicable to their transactions.⁵ These companies must not run afoul of the Islamic prohibitions on: (1) the taking or giving of interest—*riba*; (2) excessive risk—*gharar*; or (3) the sale of prohibited—*haram*—goods or services.⁶ They also must not invest in secondary ventures such as an acquisition of stock in companies that engage in these prohibited activities.⁷

To accomplish these goals, many companies hire *Shari'ah* experts or maintain *Shari'ah* supervisory boards to oversee the activities of these companies to make sure that they are in compliance with *Shari'ah* rules.⁸ These supervisory boards issue *fata'wa*—the plural of *fatwa*—which are non-binding legal opinions guaranteeing investors or customers that the company is acting in accordance with Islamic law.⁹ These scholars and their *fata'wa* focus on the forms of the transactions, making sure that transactions are not in violation of the prohibitions listed above.¹⁰ The authors of these *fata'wa* never mention the treatment of workers.¹¹ The question is: why not? Islam requires the fair treatment of workers. *Shari'ah* is clear that workers are

³ Muneer Fareed, *The Ethics of Islamic Financing*, AM. LEARNING INST. FOR MUSLIMS (Mar. 22, 2011), <http://www.alimprogram.org/articles/the-ethics-of-islamic-financing/>.

⁴ Shaheen Pasha, *Islamic Trade Finance Seen Lifting Growth of Sector*, THE MUSLIM OBSERVER (July 7, 2011), <http://muslimmedianetwork.com/mmn/?tag=finance>; see also RAJ BHALA, UNDERSTANDING ISLAMIC LAW (*SHARI'A*) 852 (LexisNexis 2011) (also noting that the industry is growing at a rate of fifteen to twenty percent per year).

⁵ BHALA, *supra* note 4, at 852–53.

⁶ See *id.* at 653–58, 667–71, 853, 1405.

⁷ Cf. *id.* at 838, 840 (discussing the limits of Islamic real estate investment ventures whose underlying properties do not involve investment in or sale of pork, arms, alcohol, pornography, *riba*, and *gharar*).

⁸ *Id.* at 853–54.

⁹ *Id.* at 854, 1401.

¹⁰ *Id.* at 854.

¹¹ See *id.* (listing the activities the *Shari'ah* experts supervise, but failing to mention the treatment of workers).

entitled to be respected, to be treated with dignity, and to be paid a fair wage—a living wage.¹² Branding a company as *Shari'ah*-compliant without regard to its treatment of workers is not only incorrect, but also disingenuous.

The purpose of this Article is to examine workers' rights under Islamic law. Companies claiming to be in compliance with the Islamic *Shari'ah* must look beyond the forms of the transactions and the content of the products they sell. The companies and their *Shari'ah* advisors must also examine the treatment of the workers employed by the companies. If the workers are not being treated fairly, in accordance with Islamic law, the owners of these companies and their *Shari'ah* advisors should not claim that the companies and their products are *Shari'ah*-compliant. As this Article shows, the fair treatment of workers is relevant to the analysis of whether a company is *Shari'ah*-compliant. The Qu'ran, the teachings of the Prophet (P.B.U.H.), and the writings of the scholars are replete with instructions regarding the fair treatment of workers. Furthermore, as Islamic law is religious law, the fair treatment of workers is not only a legal duty that might arise under international labor standards or labor codes of specific countries, but it is a moral and religious duty as well. The ethical standards incorporated into the Islamic law governing the relationship between employers and employees cannot be discounted by those who profess to be good Muslims, or by the companies that claim to be in compliance with the Islamic *Shari'ah*. The following is a true story that inspired this Article, and it demonstrates the importance of taking seriously the treatment of workers by companies claiming to be *Shari'ah*-compliant.

In 2006, in Indianapolis, Indiana, a group of janitors was working in a downtown building.¹³ Their starting salary was \$7.50 per hour.¹⁴ Full-time employees received some health benefits, paid holidays, and vacation time.¹⁵ But another group of janitors in the nearby city of Cincinnati, Ohio, was making

¹² Fareed, *supra* note 3.

¹³ Kim Bobo, *Dispatches from the Workplace: Is that Shari'a?*, RELIGION DISPATCHES (Apr. 2, 2009), <http://religiondispatches.org/idispatches-from-the-workplace-is-that-sharia/>.

¹⁴ *Id.*

¹⁵ *Id.*

\$9.80 per hour, up from \$7.50, due to pressure from the unions and other advocates of workers' rights.¹⁶ Similar wage increases were seen in Columbus, Ohio, after unions negotiated with the janitorial companies.¹⁷ Claiming that the \$7.50 per hour wage was too little to live on, the workers began to protest.¹⁸ Their efforts to force talks with the janitorial companies fell on deaf ears for two years.¹⁹ Finally, the Indianapolis janitorial companies agreed to negotiate a contract with the Service Employees International Union.²⁰

Meanwhile, a group of clergy committed to workers' rights became involved in the cause.²¹ They claimed that the wages were too low to provide the workers with a decent living.²² In addition to putting pressure on the janitorial companies to negotiate a contract with the janitors, they also tried to put pressure on the building owners that hired the janitorial companies.²³ One of those companies was HDG Mansur Group ("Mansur").²⁴

Mansur is a multi-national enterprise headquartered in Indianapolis, where it owns one of the largest skyscrapers in the city.²⁵ It currently has over two billion dollars of property under its management.²⁶ It is the second largest property owner in Indianapolis.²⁷ While the janitors were demanding better wages and benefits, Mansur was planning to launch an international real estate investment fund, the Al-Umran Global Property Fund Limited.²⁸ It would be the first publically-traded *Shari'ah*-compliant real estate investment fund.²⁹ It was set to launch on the London and Dubai stock exchange.³⁰

¹⁶ Fareed, *supra* note 3.

¹⁷ *Id.*

¹⁸ Bobo, *supra* note 13.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; see also Fareed, *supra* note 3.

²² Fareed, *supra* note 3.

²³ Bobo, *supra* note 13.

²⁴ *Id.*

²⁵ See *Property Development*, HDG MANSUR, <https://web.archive.org/web/20131213224248/http://hdgmansur.com/Property-Development.asp> (last visited Dec. 30, 2014).

²⁶ *Id.*

²⁷ Bobo, *supra* note 13.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

In 2006, a group of Christian, Jewish, and Muslim clergy—calling themselves the “Indianapolis Clergy Committee”—began to advocate for the Mansur janitors.³¹ As they had done in other workers’ struggles, they staged protests and tried to put pressure on the janitorial companies and Mansur to negotiate better wages and benefits for the workers.³² The Islamic Society of North America (“ISNA”), located in Indianapolis, also got involved.³³ Dr. Muneer Fareed, the Secretary General of the ISNA, issued a letter to investors of Mansur warning them that they should not invest in the company, despite its claim to have become *Shari’ah*-compliant, because the company did not follow the directives of Islamic *Shari’ah* regarding the treatment of its workers.³⁴ In that letter, he stated, “The unjust treatment of workers poses a threat to both the integrity and reputation of Islamic investment practices, but also to Islam’s vision of social justice.”³⁵ Sheikh Abdool Khan, a scholar representing the ISNA and a member of the Islamic Foundation, also issued a statement criticizing the certification of Mansur as *Shari’ah*-compliant.³⁶ He stated, “To blindly sign them off as Shari’a-compliant would do a disservice to the spirit of Islamic Shari’a, not to mention the disservice to poor helpless janitors and their families”³⁷ Members of the coalition, including the clergy, traveled to London to attend the launch of the new Mansur real estate division.³⁸ They handed out pamphlets warning the investors that the company’s claims of *Shari’ah* compliance were disingenuous due to the low wages the janitorial company paid its workers, and they held a round table discussion for interested parties.³⁹

Simply raising the issue of the treatment of workers in the context of the certification process for *Shari’ah* compliance is a radical departure from the normal analysis. The author

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Press Release, Unite the Union, Unite: U.S. Muslim-Christian-Worker Delegation Coming to London To Stress Worker Rights in Islamic Investing (Nov. 2, 2007), <http://www.politics.co.uk/opinion-formers/unite-the-union-t-g-section/article/unite-u-s-muslim-christian-worker-delegation-coming-to-londo>.

applauds the workers, clergy, and union representatives who devised this Islamically-based strategy to question the treatment of the workers who cleaned the building occupied by Mansur. It is the author's hope that this Article will inspire companies, and scholars who certify companies and transactions as *Shari'ah*-compliant, to look beyond the financing and investments to the treatment of those who are employed by these companies. Furthermore, unionization is compatible with Islam and *Shari'ah*.⁴⁰ Encouraging the unionization of workers in companies that claim to offer *Shari'ah*-compliant products and services can help those companies to ensure that they are, in fact, operating within the confines of *Shari'ah* because unions can help ensure that companies are paying a fair living wage to their workers. Attention to the treatment of workers in these companies would improve the industry and hopefully make investing in *Shari'ah*-compliant companies even more attractive to Muslims and non-Muslims who want to invest in or do business with ethically sound companies.

I. *SHARI'AH*-COMPLIANT COMPANIES

Although there has always been Islamic-lending practices on a small scale,⁴¹ the modern large-scale commercial banking and financing operations based on Islamic principles and practices began to emerge only within the past few decades.⁴² The current Islamic finance and banking movement dates from the 1970s when the petrol dollars started to flood the Gulf States and the Middle East.⁴³ Major Islamic banks and investment houses now operate in Abu Dhabi, Dubai, Saudi Arabia, Indonesia, and Malaysia.⁴⁴ They provide retail financial services and are also

⁴⁰ Gamal al Banna, *Islam and Trade Unions*, in TOWARDS ISLAMIC LABOUR & UNIONISM 63, 64, 66–67, 70 (1984); see also *infra* APPENDIX.

⁴¹ See *What Is Islamic Banking?*, *Islamic Banking*, INST. OF ISLAMIC BANKING & INS., http://www.islamic-banking.com/what_is_ibanking.aspx (last visited Dec. 30, 2014).

⁴² *Id.*

⁴³ The modern movement grew in part out of a revitalization effort that was a reaction to Western colonialism. See Mohammad Omar Farooq, *Developing Expertise and Talent in Islamic Financial Institutions*, AAOIFI 7 (2012), <http://www.iefpedia.com/english/wp-content/uploads/2012/05/Dr.-Mohamed-Omar-Farooq.pdf> (discussing the relationship between Islamic finance and colonialism).

⁴⁴ See *Regional Leader: The Emirate Is One of the Top Names in Sharia-Compliant Finance*, OXFORD BUS. GROUP, <http://www.oxfordbusinessgroup.com/>

involved in multi-million dollar deals that are structured according to Islamic principles.⁴⁵ They are invested in projects within the Muslim world and in Asia, Africa, Europe, and the United States.⁴⁶

Middle Eastern companies invest over one billion dollars annually in the United States.⁴⁷ Most of these investments are in the area of real estate and development projects.⁴⁸ Many of these investors insist on having their financing structured according to Islamic principles.⁴⁹ So, not surprisingly, some large law firms in the United States are starting to have special practice groups that are involved in structuring multi-million dollar deals based on Islamic finance strategies for large Middle Eastern corporations and for the governments of Muslim majority countries.⁵⁰

news/regional-leader-emirate-one-top-names-sharia-compliant-finance (last visited Dec. 30, 2014).

⁴⁵ See generally *id.*

⁴⁶ The larger *Shari'ah*-compliant financial transactions often involve variations on the traditional forms of Islamic financing. However, some of these transactions are quite complex and involve innovative financial programs that some scholars find controversial. See generally Mohammad Omar Farooq, *Exploitation, Profit, and the Riba-Interest Reductionism*, 5 INT'L J. ISLAMIC & MIDDLE E. FIN. & MGMT. 292, (2012) (noting the modern use of *hiyal* (innovation) in the *Shari'ah*-compliant financial industry); see also John Foster, *How Sharia-Compliant Is Islamic Banking?*, BBC NEWS (last updated Dec. 11, 2009, 12:02 AM), <http://news.bbc.co.uk/2/hi/business/8401421.stm> (discussing the differences of opinions of the *Shari'ah* scholars in the industry and the controversy over the *sukuk* bond market). Some of these more complex transactions are kept confidential by the companies involved and the law firms that advise them. Interview with Steve Adelkoff, former CEO, *Shari'ah* Capital, in Pittsburg, Pa. (2010).

⁴⁷ See, e.g., Paul Blustein, *Mideast Investment up in U.S.; Proposed Ports Deal Is Just Part of Flood of Oil Wealth Spilling Ashore*, WASH. POST, Mar. 7, 2006, at A01; see also Alice Gomstyn, *Should Middle East Funds Own U.S. Banks?*, ABC NEWS (July 18, 2008), <http://abcnews.go.com/Business/MarketTalk/story?id=5398191&page=1>.

⁴⁸ See, e.g., Blustein, *supra* note 47.

⁴⁹ See *id.*

⁵⁰ For example, K&L Gates, King and Spalding, and Reed Smith all have Islamic practice groups. See *Islamic Finance, Practices*, K&L GATES, <http://www.klgates.com/islamic-finance-and-investment-practices/> (last visited Jan. 1, 2015); *Global Islamic Finance & Investment, Practices*, KING & SPALDING, <http://www.kslaw.com/practices/Middle-East-Islamic-Finance> (last visited Jan. 1, 2015); *Islamic Finance, Practices & Industries*, REED SMITH, <http://www.reed.smith.com/Islamic-Finance-Practices/> (last visited Jan. 1, 2015).

A. *Guarantees of Shari'ah Compliance*

The industry is based on promises of *Shari'ah* compliance. Companies, banks, and financial institutions hire scholars who are experts in Islamic law to analyze their products and determine whether they are *Shari'ah*-compliant.⁵¹ *Shari'ah* compliance is guaranteed by *fata'wa* issued on behalf of the company claiming to be *Shari'ah*-compliant.⁵² A *fata'wa* is a non-binding legal opinion given by an expert in *Shari'ah*.⁵³ Many banks and financial institutions have their own *Shari'ah* supervisory boards.⁵⁴ Well-recognized and influential scholars trained in *Shari'ah* sit on these boards.⁵⁵ Other companies that do not retain their own *Shari'ah* advisory boards hire organizations—such as the *Fiqh* Counsel of North America or Shape Corporation—to determine if their products are *Shari'ah*-compliant and to issue a *fata'wa* on their behalf.⁵⁶ Although scholars disagree regarding some of the finer points of Islamic law in general, and Islamic finance law in particular, the group of scholars that sits on the *Shari'ah* supervisory boards of major national and international companies and organizations tends to agree with one another.⁵⁷ This may be due, at least in part, to

⁵¹ Foster, *supra* note 46.

⁵² *Id.*

⁵³ *What Is a Fatwa?, Legal Rulings, Understanding Islam*, THE ISLAMIC SUPREME COUNCIL OF AM., <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/44-what-is-a-fatwa.html> (last visited Jan. 1, 2015).

⁵⁴ *Shari'ah Supervisory Board [Religious Board], Takaful Islamic Insurance*, INST. OF ISLAMIC BANKING AND INS., http://www.islamic-banking.com/takaful_shariah_supervisory_board.aspx (last visited Jan. 1, 2015).

⁵⁵ See, e.g., *Shari'ah Supervisory Board, Islamic Banking*, UNITED ARAB BANK, http://www.uab.ae/cms/index.php?option=com_content&view=article&id=141&Itemid=126 (last visited Jan 1, 2015).

⁵⁶ U. ISLAMIC FIN., <http://www.myuif.com> (last visited Jan. 1, 2015). There are a number of ways Islamic banks deal with deposits. One of these ways is a profit-sharing account. See, e.g., *Personal Shariah-Compliant Profit-Sharing Savings Accounts*, U. ISLAMIC FIN., <http://www.myuif.com/financing/personal-shariah-compliant-profit-sharing-savings-accounts/> (last visited Jan. 1, 2015). The deposits are used to fund the Islamic-compliant investment by the bank, such as the mortgages. *Id.* The bank is not allowed to invest in any non-Islamic-compliant businesses. *Id.* The depositors, instead of getting interest from the bank, get a share of the profit from the bank's investments. *Id.* The Shape *fatwa* says that the "Shape," an Islamic Banking Consulting Group, is moving toward *mudaraba* finance. See U. ISLAMIC FIN., *supra*.

⁵⁷ Syed Farhan Shah et al., *Islamic Banking Controversies and Challenges*, 3 INTERDISC. J. CONTEMP. RES. IN BUS. 1018, 1023–24 (2012).

the fact that there are only a handful of Islamic scholars considered knowledgeable enough or prestigious enough to earn a position on these boards.⁵⁸

In addition, there are non-financial services companies that claim to be *Shari'ah*-compliant.⁵⁹ They encourage investment by Muslims who do not want to be in any way involved in anti-Islamic business practices. Some of these publically-traded companies are listed on indices such as the Dow Jones Islamic Index ("DJII").⁶⁰ In order to be included on this index, a company is screened to determine whether its activities are compatible with *Shari'ah* principles.⁶¹ The Dow Jones Islamic Index has its own *Shari'ah* supervisory board that issues *fata'wa* declaring the procedures for screening companies for *Shari'ah* compliance.⁶² The board certifies that a company does not deal in prohibited products and does not have too much debt or involvement in prohibited financial transactions.⁶³ In addition, a number of these companies have their own websites that declare their *Shari'ah* compliance.⁶⁴ On the other hand, there are financial

⁵⁸ The industry has been criticized as simply attempting to camouflage the impermissible taking of *riba* and *gharar*. I take no position in this Article regarding the current practices regarding *riba* and *gharar*.

⁵⁹ See *Overview, Dow Jones Islamic Market Indices*, S&P DOW JONES INDICES, <http://www.djindexes.com/islamic/index.cfm?go=overview> (last visited Jan. 1, 2015).

⁶⁰ See *id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* In order to determine eligibility for The Dow Jones Islamic Market Indices ("DJII"), "stocks are screened to ensure that they meet the standards set out in the published methodology." *Id.* The DJII claims to screen their companies for dealings in "[a]lcohol," "[p]ork-related products," "[c]onventional financial services," "[e]ntertainment," "[t]obacco," and "[w]eapons and defense." *Id.* They also screen the companies regarding their financial dealings to determine that the companies do not engage in prohibited types of transactions, such as those that involve *riba* and *gharar*. In addition, they screen the companies through a process they call "[f]inancial [r]atio [s]creens." *Id.* In this screening process, the companies must show that "[a]ll of the following must be less than 33 [percent]: Total debt divided by trailing 24-month average market capitalization[.] The sum of a company's cash and interest-bearing securities divided by trailing 24-month average market capitalization[.] Accounts receivables divided by trailing 24-month average market capitalization." *Id.*

⁶⁴ See, e.g., *Amana Mutual Funds Trust, Funds & Performance*, SATURNA CAPITAL, <http://www.saturna.com/amana> (last visited Jan. 1, 2015); see also *Shari'ah Board, Our Firm*, ARCAPITA, <http://www.arcapita.com/our-firm/shariah-board> (last visited Jan. 1, 2015). Arcapita filed for relief in bankruptcy. Tiffany Kary & Arif Sharif, *Arcapita Files for Bankruptcy Protection as Debt Talks Fail*, BLOOMBERG

institutions and companies that do not claim to be wholly *Shari'ah*-compliant but do offer certain *Shari'ah*-compliant services.⁶⁵ Some insurance companies also make available *Shari'ah*-compliant alternatives to conventional insurance.⁶⁶ This raises interesting issues concerning the amount of screening *Shari'ah*-compliant operations must have *vis-a-vis* the non-*Shari'ah*-compliant part of the business. Nevertheless, when a company brands itself as *Shari'ah*-compliant, it is usually held—at a minimum—to the standards set forth by the Dow Jones Islamic Index. This Article focuses on those companies and leaves to another day the analysis of companies that offer *Shari'ah*-compliant services as a portion of their business.

The scholars who sit on the *Shari'ah* supervisory boards of the major companies, financial institutions, and the Islamic indices work within a system of jurisprudence developed over 1,400 years ago.⁶⁷ The Islamic law is older than the common law and civil law systems.⁶⁸ In order to understand the methodology of the modern application of these ancient rules, and to follow the logic of the arguments presented herein, one must have a basic understanding of Islamic jurisprudence. The following is a short overview of *usul al-fiqh*—Islamic jurisprudence—and is meant for those readers who have no familiarity with Islamic law.

(Mar. 19, 2012, 4:18 PM), <http://www.bloomberg.com/news/2012-03-19/arcapita-bank-files-for-chapter-11-bankruptcy-protection.html>.

⁶⁵ The Devon Bank in Chicago offers *Shari'ah*-compliant financing. See *Murabaha, Shariah Compliant Financing, Financing*, DEVON BANK, https://www.devonbank.com/asp/general_10.asp (last visited Jan. 1, 2015). Other conventional banks have subsidiaries that offer *Shari'ah*-compliant services. See, e.g., *Introduction, About Citi Islamic*, CITI ISLAMIC INVESTMENT BANK E.C., <http://www.citibank.com/ciib/homepage/index.htm> (last visited Jan. 1, 2015); *Islamic Finance at Deutsche Bank, Islamic Finance, Middle East & North Africa*, DEUTSCHE BANK (May 15, 2014), https://www.db.com/mena/en/content/islamic_finance.htm.

⁶⁶ AIG offers *Shari'ah*-compliant investments and insurance, “*takaful*,” but does not claim to be wholly *Shari'ah*-compliant. *AIG Offers First Takaful Homeowners Insurance Product for U.S.*, INS. J., Dec. 2008, available at <http://www.insurancejournal.com/news/national/2008/12/02/95930.htm>.

⁶⁷ *Origins of Islamic Law, America Responds to Terrorism, Free Lessons*, CONST. RTS. FOUND., <http://www.crf-usa.org/america-responds-to-terrorism/the-origins-of-islamic-law.html> (last visited Jan. 1, 2015).

⁶⁸ *Id.*

B. *Problems of Interpretation and Enforceability*

1. Classical Sources of *Fiqh*

Although there is considerable agreement regarding the overarching policies that underlie the prohibitions, the interpretations of the Qur'an, *Sunnah*, and other sources of Islamic law vary according to the traditional schools of thought, geography, and time period. There is no one authoritative source for proper interpretation and application of *Shari'ah*. As explained below, in order to convince the industry that proper treatment of workers is essential to having a truly *Shari'ah*-compliant company, an argument must be made starting with the Qur'an and *Sunnah*, and using traditional forms of *usul al-fiqh*, the elements of which are explained below.

Most scholars agree that *Shari'ah* is the portion of Islamic law that is divinely revealed and consists of the Qur'an and the *Sunnah* of the Prophet (P.B.U.H.).⁶⁹ *Shari'ah* is considered the right path of religion, and primarily emphasizes faith in G-d and the proper way to worship.⁷⁰ *Shari'ah* aims to protect the five essentials: life, religion, intellect, property, and family.⁷¹ It is also concerned with justice, and while part of *Shari'ah* deals with issues of faith and worship, it is also concerned with transactions between humans.⁷² It covers civil transactions, criminal law, family law, the law of inheritance, and the law of governance.⁷³ Religious ideals and morality permeate every aspect of Islamic law.

⁶⁹ See, e.g., MOHAMMAD HASHIM KAMALI, *SHARI'AH LAW: AN INTRODUCTION* 3, 19 (2008) (distinguishing between *Shari'ah* and *fiqh*); 1 SHAYKH MOHAMMAD AKRAM NADWI, *AL-FIQH AL-ISLAMI: ACCORDING TO THE HANAFI MADHHAB* 2-3 (Susanne Thackray et al. eds., 2007); SACHIKO MURATA & WILLIAM C. CHITTICK, *THE VISION OF ISLAM* 19, 22 (Roger Corless et al. eds., 1994).

⁷⁰ See KAMALI, *supra* note 69, at 3-5, 16-17.

⁷¹ *Id.* at 3.

⁷² LAWRENCE ROSEN, *THE JUSTICE OF ISLAM: COMPARATIVE PERSPECTIVES ON ISLAMIC LAW AND SOCIETY* 154 (2000); MALISE RUTHVEN, *ISLAM IN THE WORLD* 163-64 (2d ed. 2000).

⁷³ See 'ABD AR-RAHMAN I. DOI, *SHARIAH: ISLAMIC LAW* 31 (Abdassamad Clark ed., 2d rev. ed. 2008).

Islamic law is often referred to as *Shari'ah* law.⁷⁴ But there is an important distinction between *Shari'ah* and Islamic law. Islamic law includes *Shari'ah*, but it also includes the law that has been derived from *Shari'ah* through human understanding and the application of reason, or *fiqh*.⁷⁵ The extent to which the works of the classical schools of law should be followed in modern times is in controversy.⁷⁶ Thus, *Shari'ah*-derived national codes and the scholarship regarding the application of *Shari'ah* to modern issues are not generally considered to be part of *Shari'ah*, but can more broadly be considered part of Islamic law.⁷⁷ Islamic law also includes the legal rulings—or *fata'wa*—of modern scholars and judges.⁷⁸ In the United States, it can also refer to the interpretations of Islamic law made by U.S. judges dealing with issues and concepts originally devised by *Shari'ah* scholars. And it can refer to the interpretations of Islamic law that have begun to take shape by Islamic arbitrators, scholars, businesses, and legal specialists who live and work in the United States.

The Qur'an is the first and highest source of *Shari'ah*.⁷⁹ Muslims believe that the Qur'an was revealed to the Prophet (P.B.U.H.) over a period of years, and that it is the actual word of G-d.⁸⁰ The Qur'an contains over 6,200 verses, but it is not a book

⁷⁴ Because some readers might not be familiar with Islam and the role of *Shari'ah* in Islam, I have included a very general overview of these topics here. However, Islam is complex, varied, and subject to numerous interpretations, as are all major religions. As such, generalization necessarily leads to distortion. Nevertheless, I have endeavored to cover the main areas of Islamic law that a reader who is not familiar with this area will need to understand in order to put the topics covered in this Article into context. I encourage those who are less familiar with Islam and the role of *Shari'ah* to read about these topics in more depth. I recommend the sources I cite in this Section.

⁷⁵ 8 FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEMS: STUDIES OF SAUDI ARABIA* 3-5 (Ruud Peters & Bernard Weiss eds., 2000).

⁷⁶ See, e.g., KAMALI, *supra* note 69, at 246, 249-50; L. ALI KHAN & HISHAM M. RAMADAN, *CONTEMPORARY IJTIHAD: LIMITS AND CONTROVERSIES* 53 (2011) (observing that "English has emerged as a principal language of modern *ijtihad*"); WAEL B. HALLAQ, *A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH* 211-14 (1997).

⁷⁷ See, e.g., KAMALI, *supra* note 69, at 250.

⁷⁸ *Id.* at 171, 174-77.

⁷⁹ VOGEL, *supra* note 75, at 3-4.

⁸⁰ *Id.*

of law. Only 500 of the verses in the Qur'an can be considered "legal" verses.⁸¹ The remaining verses deal with belief, dogma, history, and the nature of humans and G-d.⁸²

The traditions of the Prophet (P.B.U.H.), or the *Sunnah*, make up the second source of *Shari'ah*.⁸³ These include examples of proper behavior, legal rulings, letters, and the *ahadith*.⁸⁴ The *ahadith* are the teachings of the Prophet (P.B.U.H.) passed down from generation to generation and were collected, analyzed, and authenticated by Islamic scholars.⁸⁵ The *Sunnah* together with the Qur'anic legal verses constitute *Shari'ah*, but there are other sources of Islamic law.⁸⁶

Shortly after the time of the Prophet (P.B.U.H.), Islam grew rapidly and, within just a few years, the Muslim caliphates had spread over the Middle East, North Africa, and Eastern Europe.⁸⁷ Classical Islamic jurisprudence developed in the ninth through the eleventh centuries, a period sometimes called the Golden Age of Islam.⁸⁸ It was a period of scientific advancement and the flourishing of an enlightened and rich civilization.⁸⁹ During this time, the various schools of thought were founded.⁹⁰ The scholars wrote massive books of *fiqh*, compiled *ahadith*, wrote commentary on the verses of the Qur'an, and developed the science of Islamic jurisprudence, *usul al-fiqh*.⁹¹

A handful of renowned scholars founded the leading schools of thought, or *Mahdrabs*.⁹² Scholars from these schools of thought developed the Islamic *corpus juris* and Islamic jurisprudence. The scholars from the different schools of thought agreed on most of the basic principles on Islamic law and jurisprudence, but certain differences remained characteristic of each school of thought, and those differences persist today.⁹³ The

⁸¹ HALLAQ, *supra* note 76, at 3.

⁸² *See id.* at 3-4.

⁸³ *Id.* at 2.

⁸⁴ DOI, *supra* note 73, at 78-79.

⁸⁵ *Id.* at 78-82.

⁸⁶ KAMALI, *supra* note 69, at 19.

⁸⁷ BHALA, *supra* note 4, at 125.

⁸⁸ *Id.* at 148-53.

⁸⁹ *Id.*

⁹⁰ DOI, *supra* note 73, at 167.

⁹¹ *Id.* at 132-67; *see also* BHALA, *supra* note 4, at 309-12.

⁹² DOI, *supra* note 73, at 132-67.

⁹³ *See id.*; *see also* TAHA JABIR AL 'ALWANI, THE ETHICS OF DISAGREEMENT IN ISLAM 87-88 (A. S. al Shaikh-Ali ed., AbdulWahid Hamid trans., 2000).

works of the leading scholars from these schools of thought are still consulted by lawyers, judges, legislatures, and contemporary scholars.⁹⁴ During the classical period, these scholars devised techniques for answering legal questions that were not clearly addressed in the Qur'an and *Sunnah*. The portion of Islamic jurisprudence that deals with sources of Islamic law and techniques for reaching a correct decision in a case occupies a large portion of Islamic jurisprudence, and is called *usul al-fiqh*.⁹⁵ Because each school of thought has slightly different ways of reaching a conclusion on a question of law, the scholars from each school of thought devised substantive rules of law, *furu al-fiqh*, that are not completely consistent with one another. Because there is no central authority in Islam, each Muslim can decide which school of thought to follow.

Additionally, Islamic law is not "judge-made" law. Rulings of individual judges are not given precedential authority.⁹⁶ Rather, judges consult the writings of the scholars to make a decision in a particular case. Moreover, the power of the scholars was a check on the power of the political leaders. Part of their legitimacy stemmed from leading the state in accordance with Islamic principles and law. As such, the scholars wielded influence over the leaders, as the scholars had the power to declare their actions or laws un-Islamic, or contrary to *Shari'ah*.

2. Secondary Sources of *Fiqh* and Modern Interpretations of *Shari'ah*

Even though modern Muslim-majority nation-states have codified the law and have incorporated either English common law or civil law codes to a large extent, whether a certain rule or law is based on *Shari'ah* still depends on the interpretation of *Shari'ah*. This leads to debates concerning the *fiqh* and makes the classical scholarship of medieval thinkers relevant today.⁹⁷ However, whether contemporary scholars may reinterpret the *fiqh* set down in the Middle Ages is an argument that has been percolating in Islamic jurisprudence for almost one thousand years. It continues to rage today and is at the center of the conflict between traditionalists and reformers in Islam.

⁹⁴ See VOGEL, *supra* note 75, at 59.

⁹⁵ BHALA, *supra* note 4, at 288.

⁹⁶ See VOGEL, *supra* note 75, at 57.

⁹⁷ See HALLAQ, *supra* note 76, at 211.

In the tenth century, the prominent *Shari'ah* scholars declared that the door to *ijtihad* was closed.⁹⁸ This meant that all questions concerning Islamic law had been answered, and no new interpretations or innovations were needed.⁹⁹ Thus, the job of the scholars—and Muslims—was to consult the works of *fiqh* to find the answers to legal questions. This is referred to as *taqlid*.¹⁰⁰ However, since the eleventh century, there have been a number of revival and revitalization movements that have advocated for reinterpretation of the *fiqh*. At one extreme is Ibn Taymiyya and his intellectual descendant Ibn Abd al-Wahab, who advocate for a return to the primary sources of *Shari'ah*—the *Sunnah* and the Qur'an—and a return to the values and practices of the first generations of the Muslim community.¹⁰¹ At the other extreme, there are modern reformers who advocate for a return to *ijtihad*, not to purify the community by a return to the seventh century practices of the communities in Arabia, but to adapt *Shari'ah* to the challenges and sensibilities of modern life.¹⁰² Nevertheless, these modernist reformers all recognize the foundational importance and infallibility of the Qur'an and the *Sunnah*. And, even in practicing reinterpretation of the *fiqh* by elevating controversial sources and methodologies to a higher status than they previously held, modernist reformers continue to rely on the classical sources and methodologies to support their arguments for change and reinterpretation.¹⁰³ These sources and methodologies are described below.

Although the Qur'an is the direct word of G-d, and as such occupies the highest place in Islamic jurisprudence,¹⁰⁴ there are certain legal verses of the Qur'an that are open to interpretation.¹⁰⁵ The science of *tafsir* is the exegesis of the Qur'an that began during the life of the Prophet (P.B.U.H.).¹⁰⁶ The scholars of *tafsir* not only interpreted the words of the Qur'an, but established canons of construction for further

⁹⁸ BHALA, *supra* note 4, at 335–36.

⁹⁹ See VOGEL, *supra* note 75, at 57.

¹⁰⁰ *Id.*

¹⁰¹ See *id.* at 71, 73–74.

¹⁰² HALLAQ, *supra* note 76, at 212–14.

¹⁰³ See *id.* at 218–19.

¹⁰⁴ DOI, *supra* note 73, at 28; VOGEL, *supra* note 76, at 3–4.

¹⁰⁵ DOI, *supra* note 73, at 63.

¹⁰⁶ *Id.* at 48–51.

exegesis.¹⁰⁷ Although *tafsir* deals with the Qur'an, it can still be seen as a part of the *fiqh* because it involves the application of human reasoning, which unlike the Qur'an itself, is subject to error.¹⁰⁸ Thus, the *tafsir* is a subject of debate among scholars who believe that the *fiqh* should be open to further interpretation. Likewise, the *Sunnah*, although it is part of the revealed law, is subject to human interpretation. In fact, there is disagreement within the various schools of thought concerning both the authenticity of certain *ahadith* and the proper interpretation of the *Sunnah*.

As to the secondary sources, there is even more disagreement. Some schools of thought reject certain sources; others place different emphasis on the various sources. Nevertheless, all of these secondary sources are the product of human reasoning, and therefore are subject to error and arguably open to modern interpretation. This is an important point to remember when discussing the *Shari'ah*-compliant products industry. When new financial products are introduced in the global Islamic banking and finance system, the *Shari'ah* advisors look to these sources in issuing their opinions regarding the compliance of these products with *Shari'ah*. It is also to these sources and through the use of these methodologies to which those advocating for a change in the treatment of workers by Islamic companies and nations look in crafting their arguments.¹⁰⁹

The first secondary source of the *fiqh* is *ijma*. Simply put, *ijma* is the consensus of the scholars.¹¹⁰ It is supported by a *hadith*: "My *Ummah* [—people—] will not unite on an error."¹¹¹ However, each school of thought differs regarding the definition of a scholar for this purpose. Another useful source or methodology of *fiqh* is *qiyas*. *Qiyas* refers to the process of reasoning by analogy.¹¹² Similar to *qiyas*, *ijtihad* is a method of determining a legal rule by applying personal reasoning to the issue and sources.¹¹³ Both *qiyas* and *ijtihad* are supported by the

¹⁰⁷ *Id.* at 56.

¹⁰⁸ Cf. BHALA, *supra* note 4, at 290–92 (discussing the process of interpretation and construction of religious texts).

¹⁰⁹ See *infra* APPENDIX.

¹¹⁰ DOI, *supra* note 73, at 98.

¹¹¹ *Id.* at 99.

¹¹² BHALA, *supra* note 4, at 319.

¹¹³ *Id.* at 334–35.

verse in the Qur'an that calls believers to pray in the direction of Mecca.¹¹⁴ Because Muslims must use their power of reasoning to determine the direction of Mecca, the founder of the *Shafi'i* school of thought argued that G-d intended for people to use reason to determine the meaning of certain passages of the Qur'an.¹¹⁵ As mentioned above, it is a source of controversy as more traditional scholars believe that *ijtihad* is no longer necessary and that all issues can be decided by following the classical *fiqh* through imitation, or *taqlid*.¹¹⁶ Additional sources of *fiqh* include: *siyasah Shari'yyah*, or *Shari'ah* inspired policy such as labor codes;¹¹⁷ *istihsan*, or equitable preference to find just solution;¹¹⁸ *maslahah*, or public benefit or welfare;¹¹⁹ *istislah*, or seeking best solution for general interest;¹²⁰ and *urf*, or custom.¹²¹

International law can also be considered a possible source for Islamic law. At the time of the Prophet (P.B.U.H.), international law did not exist as it does today, but the Muslim community dealt with other communities as sovereigns, signed treaties, and the Prophet (P.B.U.H.) wrote letters to the leaders of other nations. Furthermore, because the community was under attack for much of its formative period, the law of war is quite developed in Islamic law.¹²² Due to these historical precedents, there is no reason why international law cannot form a part of Islamic law, as long as it is consistent with the principles of *Shari'ah*. In fact, nations that claim to be Islamic and that *Shari'ah* is a source or the source of their law regularly enter into treaties with other nations and recognize international law as a legitimate source of law. Thus, as discussed *infra*, international labor and human rights standards and conventions—which are compatible with *Shari'ah*—may be used as references in determining the fair treatment of workers in the modern context.

¹¹⁴ HALLAQ, *supra* note 76, at 23.

¹¹⁵ *Id.* Imam Shafi made no distinction between *ijtihad* and *qiyas*. See *id.*

¹¹⁶ BHALA, *supra* note 4, at 337 (describing the controversy and pointing out that the *Shi'ites* never accepted the closing of the door to *ijtihad*).

¹¹⁷ KAMALI, *supra* note 69, at 225.

¹¹⁸ *Id.* at 19.

¹¹⁹ *Id.* at 32.

¹²⁰ *Id.* at 49.

¹²¹ *Id.* at 53.

¹²² See DOI, *supra* note 73, at 639–42, 644–46; BHALA, *supra* note 4, at 1309–23.

II. ISLAMIC COMMERCIAL LAW AND RELIGIOUS DUTY

Unlike the commercial law applicable in the United States and other legal systems derived from Western Europe, Islamic commercial law is not simply a product of legislation, *lex mercatoria*, or the accumulation of case law or other judicial opinions. It is religious law. As such, for a business practice or set of governing rules to be *Shari'ah*-compliant, they must comport with the underlying purposes of *Shari'ah* and Islam in general.¹²³ Even though the business practices might be “legal” in the sense that they are not in conflict with the positive law governing the practices, they might not be in line with *Shari'ah*. This is so even when the positive law of the jurisdiction claims to be compatible with *Shari'ah*. However, as explained *infra*, because Islam is not a hierarchical religion, there is no final authority for determining whether or not a certain practice is, in fact, in accordance with *Shari'ah*. Nevertheless, certain indisputable themes emerge from *Shari'ah* and *fiqh*. Of these, the role of justice in everyday transactions and the importance of Islamic business ethics are two themes that should not be ignored when considering whether a certain practice or transaction is *Shari'ah*-compliant.

As explained in this Section, the underlying purposes of the prohibitions against *riba* and *gharar*, which occupy so much of the discourse on *Shari'ah* compliance, are rooted in the clear injunction that Muslims must deal fairly in all of their transactions. Moreover, the protection of the weaker party in a transaction is at the root of these prohibitions. As such, Islamic ideals of social justice apply to Islamic commercial transactions, which are designed to ensure a fair and just society. The following Section explains the social justice basis for the prohibitions against *riba* and *gharar*, and argues that these underlying concepts necessitate the consideration of fair treatment of workers in the designation of *Shari'ah*-compliant status to companies that claim to be so.

¹²³ See generally Sabahuddin Azmi, *An Islamic Approach to Business Ethics*, RENAISSANCE, <http://www.renaissance.com.pk/Mayviewpoint2y5.htm> (last visited Jan. 1, 2015).

A. *Islamic Concepts of Justice*

The concepts of justice and human dignity are interwoven throughout Islamic law. In Islam, justice is closely linked with social justice and right behavior. To be a just person is to be one who fulfills the ideals of Islam, and a just society is one that takes care of those least able to fend for themselves. Justice holds an important place in Islam because the religion aims to cover all aspects of life; therefore, "[s]uch a universal religion must have Justice as its supreme aim."¹²⁴ According to the renowned modern Islamic scholar Gamal al-Banna:

Islam is not a religion of worship and prayer only, it has its own social, economic and political rules and principles which are considered an integral part of Islam. Prohibiting despotism and usury (ALRIBA), . . . imposing AL SHURA and ALZAKAT (1) . . . are a few, but clear, examples of Islamic principles [sic] in politics and economics. . . .

Justice is the only principle that can be a basis for a social, economic, and political order to which mankind can subscribe. Justice is the supreme social virtue, the virtue of virtues, and should be the aim of all societies, in all ages.¹²⁵

To give everyone his, her, or its dues is justice. Injustice is to deprive others of their dues. As it is stated in the Qur'an:

O ye who believe! / Stand out firmly / For justice, as witnesses / To Allah, even as against / Yourself, or your parents, / Or your kin, and whether / It be (against) rich or poor: / For Allah can best protect both. / Follow not the lusts / (Of your hearts), lest ye / Swerve, and if ye / Distort (justice) or decline / To do justice, verily / Allah is well-acquainted / With all that ye do.¹²⁶

There are a number of other references to justice in the Qur'an. Among the references to justice contained in the Qur'an are the following: "Allah commands justice, the / doing / Of good . . . / and He forbids / All shameful deeds, and

¹²⁴ ISMAIL AL FARUQI & GAMMAL AL BANNA, TOWARDS ISLAMIC LABOUR & UNIONISM: THREE PAPERS 68 (1984); *see also* HAUWA IBRAHIM, PRACTICING SHARIA LAW: SEVEN STRATEGIES FOR ACHIEVING JUSTICE IN SHARIAH COURTS 203 (2012) (discussing the importance of the concept of justice in Islam).

¹²⁵ *See* AL FARUQI & AL BANNA, *supra* note 124, at 67–68; *see also* IBRAHIM, *supra* note 124, at 203–07 (discussing the importance of the concept of justice in Islam).

¹²⁶ THE MEANING OF THE HOLY QUR'AN 4:135 ('Abdullah Yusuf 'Ali trans., 10th ed. 1999, reprinted 2003) [hereinafter QUR'AN].

injustice”¹²⁷ “Allah doth command you / To render back your Trusts / To those to whom they are due; / And when ye judge / Between man and man, / That ye judge with justice”¹²⁸ “Of those We have created / Are people who direct / (Others) with truth, / And dispense justice therewith.”¹²⁹ “We sent aforetime / Our Messengers with Clear Signs / And sent down with them / The Book and the Balance / (Of Right and Wrong), that men / May stand forth in justice; / And We sent down Iron, / In which is (material for) / Mighty war, as well as / Many benefits for mankind”¹³⁰ “We have sent down the Book to you with the truth so that you can judge between people according to what Allah has shown to you. But do not be an advocate for the treacherous.”¹³¹

Justice is a broad term in Islam. It includes ideas of both temporal and spiritual justice, human rights, and economic justice. These are the concepts that lie under the well-developed commercial law in Islam. As discussed *infra*, the prohibitions against *riba* and *gharar* are founded on the religious duty to not take advantage of the weaker trading partner and to ensure a healthy and socially just economy. Islamic law also speaks to the just and fair treatment of servants and workers by their masters and employers. Likewise, Islamic law is replete with examples and directives regarding the proper treatment of the least advantaged in society, including the poor, orphans, and widows. All of these directives lead to the unmistakable conclusion that the wealthy and powerful have a religious and social duty to care for those who are in weaker positions and in their care. And, as explained below, the Islamic emphasis on social justice is expressed through the law of trade, which includes the dealings between employers and workers.

¹²⁷ *Id.* at 16:90.

¹²⁸ *Id.* at 4:58.

¹²⁹ *Id.* at 7:181.

¹³⁰ *Id.* at 57:25; see also DOI, *supra* note 73, at 24.

¹³¹ DOI, *supra* note 73, at 25 (citation omitted); see also QUR’AN, *supra* note 126, at 17:105.

B. Social Justice and Riba, Gharar, Zakat, and Haram Products

As explained above, the *Shari'ah*-compliant movement is a system of faith-based ethical investing—an alternative to conventional investment.¹³² Islamic finance offers Muslims an alternative to the traditional Western banking and finance systems that are based on the charging of interest. It offers them the opportunity for investment and finance in compliance with the Islamic *Shari'ah*. It promises *halal*¹³³ products, and otherwise sin-free investments. But, as explained below, Islam is concerned with more than technical rules that prohibit certain kinds of investments. For a product, company, or service to be truly *Shari'ah*-compliant, social justice and ethical norms—and the underlying purposes of the rules that form the basis of the conventional *Shari'ah*-compliant discourses—must also be addressed. In this Section, the prohibitions of *riba*, *gharar*, and *haram* products are briefly explained, as is the requirement to give *zakat*. The underlying purposes of each of these injunctions are discussed and tied to the overall ethical criteria that must be applied to the treatment of workers in *Shari'ah*-compliant companies and transactions.

In the time before the Prophet (P.B.U.H), called the *jahiliyya* period, there were many business practices that were unethical and that took advantage of the weaker trading party.¹³⁴ These practices were also seen to weaken the economy and destabilize the community. As such, there are a number of verses in the Qur'an that deal with the taking or charging of interest—*riba*—and investments that are so inherently risky that they are akin to gambling—*gharar*.¹³⁵ These prohibitions are sometimes called the “twin pillars” of *Shari'ah*-compliant finance.¹³⁶ But a chair with only two legs is unstable. The other aspects of the law of trade and commercial relationships are equally, if not more, important than these two “pillars.” Dealing in *haram* products,

¹³² See Azmi, *supra* note 123.

¹³³ *Halal* means permitted or pure. *Halal* products are those that are not *haram*.

¹³⁴ See DOI, *supra* note 73, at 583–84.

¹³⁵ See *id.* at 581; BHALA, *supra* note 4, at 655.

¹³⁶ *Islamic Finance*, MAYER BROWN (2009) http://www.mayerbrown.com/files/Publication/8a33c9ea-1f07-4291-abfe-e6a60f20165f/Presentation/PublicationAttachment/cc39f927-056f-4ee0-845a-50f280b988fb/BF_IslamicFinanceA4.PDF.

failing to comply with *zakat*, and failing to treat trading partners and workers fairly are all practices that will cause a transaction that may be free from *riba* and *gharar* to fall.

Furthermore, wealth acquired through unjust practices is also *haram*, and it is a sin to use such ill-gotten wealth. As stated by Dr. Abd ar-Rahman I. Doi, such wealth “is definitely unclean and unlawful, and anyone who makes use of it or spends it on his or his family’s needs does himself and them great harm. . . . [His] prayers will not . . . be answered . . . and if he does good deeds they will avail him nothing.”¹³⁷ This position is supported by the following *ahadith*: “The Messenger of Allah said, ‘Allah, exalted is He, is pure and only accepts that which is pure. Allah ordered the believers with that with which he ordered the Messengers, and He said, exalted is He, “*Messengers, eat of the good things and act rightly . . .*” ’ ”¹³⁸ “Whoever buys a garment for ten dirhams of which one dirham is *haram*, Allah will not accept a *salah* of his as long as any of it remains on him.”¹³⁹ “A dirham of usury which a man consumes knowingly is worse in Allah’s view than thirty-six acts of adultery.”¹⁴⁰ And finally, “All flesh which grows from the *haram* deserves to be thrown into the Fire [of hell].”¹⁴¹ Thus, when companies take profits from ventures wherein they are benefiting from the work of underpaid laborers, they are not just out of compliance with *Shari’ah*, they are also committing a sin.

There are a number of verses from the Qur’an and *ahadith* that deal with *riba*.¹⁴² In fact, *riba* is mentioned many times in the Qur’an. A famous verse that is often cited for the prohibition on *riba* is as follows:

Those who devour [*Riba*] / Will not stand except / As stands one whom / The Evil One by his touch / Hath driven to madness. / That is because they say: / “Trade is like usury,” / But Allah hath permitted trade / And forbidden usury. / Those who after receiving / Direction from their Lord, / Desist, shall be pardoned

¹³⁷ See DOI, *supra* note 73, at 580.

¹³⁸ *Id.* at 580–81 (footnote omitted).

¹³⁹ *Id.* at 581.

¹⁴⁰ *Id.* at 587.

¹⁴¹ *Id.* at 581 (alteration in original) (footnote omitted).

¹⁴² See *id.* at 583–88 (citing QUR’AN, *supra* note 126, at 2:276, 2:277, 2:278, 3:130, 4:160, 30:39).

/ For the past; their case / Is for Allah (to judge); / But those who repeat / (The offence) are Companions / Of the Fire; they will / Abide therein (forever).¹⁴³

The following *ahadith* also prohibit *riba*. "The Messenger of Allah cursed the person who consumed usury, the person who gives it, the two witnesses to it and its scribe, and he said, 'They are all the same.'¹⁴⁴ "Usury is seventy-two gates the least of which is like a man having sexual relations with his mother."¹⁴⁵ "Even though usury be much it leads in the end to penury."¹⁴⁶

Although *riba* is often translated as "usury," the terms are not synonymous. Usury is usually understood to be the charging of excessive or unfair amounts of interest.¹⁴⁷ *Riba*, however, includes a number of transactions, including those in which any amount of interest is charged.¹⁴⁸ What is being prohibited in these interest-charging transactions is not the financing, specifically. It is the practice of the lender being paid for nothing except for the use of the money being lent.¹⁴⁹ When the lender does not take any sort of a stake in the venture, such as in a limited partnership, the lender risks only that the loan will not be repaid. This, it is argued, might lead lenders to make loans that are risky or oppressive to the borrowers.¹⁵⁰ Thus, the lender, who is already in a superior financial position, takes advantage of the needs of the borrower. On the other hand, when the lender risks some of its capital, or is paid for something other than the time value of the money, the transaction is not necessarily prohibited as *riba*.¹⁵¹

The prohibitions against *gharar* in the Qur'an and *Sunnah* are not as unambiguous as the prohibitions of *riba*. *Gharar* literally means trickery.¹⁵² The following Qur'anic verses and

¹⁴³ QUR'AN, *supra* note 126, at 2:275; see also *id.* at 3:130, 2:278.

¹⁴⁴ DOI, *supra* note 73, at 586.

¹⁴⁵ *Id.* at 587.

¹⁴⁶ *Id.*

¹⁴⁷ See Brian M. McCall, *Unprofitable Lending: Modern Credit Regulation and the Lost Theory of Usury*, 30 CARDOZO L. REV. 549, 555 (2008).

¹⁴⁸ See Mohammad H. Fadel, *Riba, Efficiency, and Prudential Regulation: Preliminary Thoughts*, 25 WIS. INT'L L.J. 655, 656 (2008).

¹⁴⁹ See McCall, *supra* note 147, at 550.

¹⁵⁰ See *id.*

¹⁵¹ BHALA, *supra* note 4, at 668. This is sometimes accomplished through the *ijara* (lease) or *murabaha* and *mudaraba* (which are a sort of joint venture). See *id.* at 563, 708, 727.

¹⁵² *Id.* at 654.

ahadith prohibit *gharar* transactions. "Why do you get the wealth of your brother, without justification?"¹⁵³ "A man mentioned to the Messenger of Allah . . . that he was deceived in a business transaction, whereupon Allah's Messenger . . . said: When you enter into a transaction, say: There should be no attempt to deceive."¹⁵⁴ These prohibited transactions involve certain kinds of risk that go to the heart of the transaction. *Gharar* is an attribute of a transaction that is akin to gambling—*mysir*.¹⁵⁵ In a *gharar* transaction, the parties are betting on something that may or may not happen in the future. One party wins, and one party loses. An extreme example of this type of transaction is the insurance contract, which is clearly prohibited. Short selling, investments in futures, and hedge fund investments are also prohibited as *gharar* transactions.¹⁵⁶ It is not the risk itself that is the object of this prohibition, it is the relative lack of knowledge about the investment's potential to succeed or fail, the opportunity for fraud in the transaction, and the likelihood of unjust enrichment that are frowned upon.¹⁵⁷

The prohibition against *riba* is based on the idea that it is wrong to allow a person who has greater economic advantage to make a profit simply by lending money to a person who is in need of finance.¹⁵⁸ The financier must assume some stake in the venture, or something of value must be given in exchange for the financing.¹⁵⁹ Prohibiting *riba* protects the economically vulnerable against exploitation by the stronger party in the financial transaction.¹⁶⁰ It also protects the community against the possible negative effects of basing the economic system on interest-based debt.¹⁶¹ Likewise, the prohibition against excessive risk is also designed to protect the trading partners from exploitation and to prevent wild speculation that could potentially squander the investor's property.¹⁶²

¹⁵³ *Id.* at 655.

¹⁵⁴ *Id.* (alteration in original).

¹⁵⁵ *Id.* at 654.

¹⁵⁶ *See id.* at 659.

¹⁵⁷ *Id.* at 655.

¹⁵⁸ *See id.* at 694–95.

¹⁵⁹ *See id.* at 695.

¹⁶⁰ *See id.*

¹⁶¹ *See id.* at 680.

¹⁶² *See* Kimberly J. Tacy, Note, *Islamic Finance: A Growing Industry in the United States*, 10 N.C. BANKING INST. 355, 356–57 (2006).

With such clear authority from the Qur'an and *Sunnah*, all scholars agree that *riba* is prohibited—as are investments that are *gharar* and dealing in *haram* products.¹⁶³ The question then becomes exactly which transactions contain elements of *riba*, *gharar*, and *haram* products that are significant enough to render the transaction—or company—*haram*. However, focusing on the forms of the transactions rather than on the effects or purposes of the rules themselves does a disservice to the entire industry. The purpose of these prohibitions is not simply formulaic; the prohibitions create a fair, healthy, socially just, and sustainable economy. In short, these prohibitions exist in order to avoid the exploitation of the weaker party in the bargaining situation, which leads to social justice and a fair distribution of the assets of the community.

Muslims are required to give a certain percentage of their excess wealth—2.5 percent—every year or so to the poor, or to some charity for the good of society.¹⁶⁴ This is not meant to be a burden on people, so it is only excess wealth that is subject to *zakat*, sometimes referred to as a tax. Excess wealth is defined as wealth that is not necessary for the well-being of the individual, family, or business.¹⁶⁵ Islamic financial institutions, and other companies that claim to operate in compliance with *Shari'ah*, are required to pay *zakat*.¹⁶⁶ It is a form of redistribution of the wealth of society.¹⁶⁷ Muslims are, of course, also encouraged to give to charity in addition to making the *zakat*

¹⁶³ See generally Virginia B. Morris & Monem A. Salam, A MUSLIM'S GUIDE TO INVESTING & PERSONAL FINANCE: IN ACCORDANCE WITH THE SHARIAH (2008) (*Haram* products include alcohol, weapons, tobacco, pork, and pornographic or obscene material).

¹⁶⁴ Sumeet H. Chugani, Comment, *Benevolent Blood Money: Terrorist Exploitation of Zakat and Its Complications in the War on Terror*, 34 N.C. J. INT'L L. & COM. REG. 601, 602–03 (2009).

¹⁶⁵ Radwa S. Elsaman & Mohamed A. 'Arafa, *The Rights of the Elderly in the Arab Middle East: Islamic Theory Versus Arabic Principle*, 14 MARQ. ELDER'S ADVISOR 1, 28–29 (2012).

¹⁶⁶ See Todd J. Schmid, Note, *The Real Shariah Risk: Why the United States Cannot Afford To Miss the Islamic Finance Moment*, 2013 U. ILL. L. REV. 1293, 1331 (2013).

¹⁶⁷ See DOI, *supra* note 73, at 611.

payments; furthermore, one of the purposes of the duty to fast during Ramadan is to help Muslims remember the suffering of those who do not have access to food or water on a daily basis.¹⁶⁸

The requirement to pay *zakat* applies to businesses as well as to individuals. For a business to be considered *Shari'ah*-compliant it must pay *zakat*.¹⁶⁹ In fact, some contend that the payment of *zakat* and the redistribution of society's wealth to protect weaker members from poverty provide the very reasons for trade.¹⁷⁰

In addition to these prohibitions and directives, Islamic law has a well-developed jurisprudence of other aspects of business and trade. One of these is business ethics. Although promoting free enterprise and trade, Islam requires ethical behavior in these endeavors. The Qur'an states, "[D]o not eat up / Your property among yourselves / For vanities, nor use it / As bait for the judges, / With intent that ye may / Eat up wrongfully and knowingly / A little of (other) people's / property."¹⁷¹ When asked "what form of gain is the best?" the Prophet (P.B.U.H.) said, "A man's work with his hands, and every legitimate sale."¹⁷²

A business transaction is only valid if there is mutual consent among the parties.¹⁷³ The Prophet (P.B.U.H.) said, "The truthful merchant [is rewarded by being ranked] on the Day of Resurrection with prophets, veracious souls, martyrs and pious people."¹⁷⁴ He also said:

The seller and the buyer have the right to keep or return the goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and

¹⁶⁸ See generally Kari Ansari, *Ramadan Acts of Worship Connect Us to the Suffering of Others*, HUFFINGTON POST (Oct. 5, 2011, 5:12 AM), http://www.huffingtonpost.com/kari-ansari/ramadan-zakat_b_916211.html?view=print&comm_ref=false.

¹⁶⁹ *Ramadan Prayer Day 28—Business: "Congratulations U.S. Taxpayer—You Are the Proud Owner of Shariah Compliant Products"*, BEST CURRENT NEWS (Aug. 16, 2012), <http://bestcurrentnews.com/2012/08/16/ramadan-prayer-day-28-business-congratulations-u-s-taxpayer-you-are-the-proud-owner-of-shariah-compliant-products/>.

¹⁷⁰ DOI, *supra* note 73, at 633.

¹⁷¹ QUR'AN, *supra* note 126, at 2:188.

¹⁷² Azmi, *supra* note 123.

¹⁷³ *Id.*

¹⁷⁴ *Id.* (alteration in original).

qualities [of the goods], then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost.¹⁷⁵

This tradition clearly calls for truthfulness and fair dealings among business persons. Cheating and lying are not only ways to make a transaction unenforceable under business law, but they are also actions that will earn punishment in the hereafter.

Islam also calls for leniency and generosity in transactions. This requirement is easily analogous to the relationship between a worker and an employer. Salman Bukhari reports that the Prophet (P.B.U.H.) said, "May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money [or debts]."¹⁷⁶ The Qur'an also emphasizes the importance of fulfilling your debts. It states, "O ye who believe! / Fulfil[] (all) obligations."¹⁷⁷ This passage is also analogous to the *hadith* that requires an employer to pay his employee "before the sweat on his brow dries."¹⁷⁸

Islamic contract law also prohibits unjust enrichment. *Riba* and *gharar* transactions can be considered forms of transactions that include the risk of unjust enrichment due to the possibility of trickery and the winner-take-all aspects of *gharar*, and the lack of work required to make a profit in *riba* transactions.¹⁷⁹ Moreover, a valid commercial contract requires lack of pressure and a weaker party is often required to be represented by a "guardian" or knowledgeable agent to help negotiate the terms of the contract.¹⁸⁰ This is similar to our concepts of unconscionability and contracts of adhesion.

Islamic business ethics are not only clearly applicable to the relationship between business partners, but also among employers and employees. Muslims are not allowed to take advantage of a weaker trading partner. This is the root of the prohibitions against *riba*, *gharar*, and *haram* products. It is also the basis for the emphasis on partnership and mutual investing

¹⁷⁵ *Id.* (alteration in original).

¹⁷⁶ *Id.* (alteration in original).

¹⁷⁷ QUR'AN, *supra* note 126, at 5:1.

¹⁷⁸ Khaled Al-Maena, 'Pay the Laborer Before the Sweat on His Brow Dries', ARAB NEWS (Aug. 10, 2001, 3:47 AM), arabnews.com/node/214461.

¹⁷⁹ See BHALA, *supra* note 4, at 655.

¹⁸⁰ Fatima Akaddaf, *Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?*, 13 PACE INT'L L. REV. 1, 48 (2001).

in Islamic commercial transactions. Avoiding exploitation of a weaker person is also prohibited through the verses and traditions that prohibit lying, cheating, and sharp practices, and those that encourage generosity in business transactions. Because the work laborers are paid for makes possible the very enterprises and goods that are the subject of trade, business ethics rules also apply to the contracts between employers and workers. Moreover, because workers do not normally negotiate successfully on their own behalves, and they are forced to choose between taking a job or going without any means of support, some scholars have suggested that unions are the only alternative to alleviate the uneven bargaining power between employers and workers.¹⁸¹

The focus on social justice in the economy is even more evident when the topic of discussion is workers' rights, but as stated before, none of the scholars involved in branding companies or transactions as *Shari'ah*-compliant have addressed the issue of workers' rights. Nevertheless, the prohibitions stem from the same set of ethics that supports the fair treatment of workers under *Shari'ah*.

III. FAIR TREATMENT OF WORKERS AND WORKERS' RIGHTS IN *SHARI'AH*

A. *Classical Sources*

1. The Value of Work and the Equal Dignity of Workers

Work or labor is highly valued in *Shari'ah*. It is not something to be avoided or looked down upon. It is not only a duty; it is a form of worship. Islam does not honor idleness, but rewards effort. There are a number of verses and *ahadith* that show the importance of productive work. For example, the Qur'an states, "They believe in Allah . . . / enjoin what is right, / And forbid what is wrong; / And they hasten (in emulation) / In (all) good works: / They are in the ranks / Of the righteous."¹⁸² According to Professor Ismail Rajhi al Faruqi,¹⁸³ worship

¹⁸¹ See AL FARUQI & AL BANNA, *supra* note 124, at 75.

¹⁸² QUR'AN, *supra* note 126, 3:114; see also *id.* at 17:12.

¹⁸³ Dr. al Faruqi, now deceased, had an impressive career as an academic and as an outspoken advocate for Palestinian rights. His career ended tragically when he was murdered in his own home in 1985, prior to the book he co-authored with

includes, "work in any legitimate field whose purpose is providing for oneself, one's family, kin and the whole of society."¹⁸⁴ Professor al Faruqi reinforces his argument by citing the following *ahadith*: "If the last hour strikes and finds you holding a nurseling in your hand, go ahead and plant it[;]"¹⁸⁵ "[t]here is no better or nobler food than that which is provided by the work of one's own hand[;]"¹⁸⁶ "[d]o seek God's bounty."¹⁸⁷ The Prophet (P.B.U.H) also stated that the best gain is "[t]hat which proceeds from the work of your hand, as well as every legitimate sale."¹⁸⁸ He also said, "Whoever returns home at the end the day exhausted from his application and effort in his hand—work, will be forgiven . . . the hand which shows the effect of hard work is worthy of being kissed."¹⁸⁹

Furthermore, Islam does not consider manual labor less worthy of praise than any other type of work. All are considered workers: teachers, government officials, doctors, laborers and household servants alike.¹⁹⁰ The Prophet (P.B.U.H.) showed respect to workers in the following story—*hadith*:

Our Prophet (peace and blessings be upon him) kissed the hands of a laborer who showed him his rough hands due to his hard labor. He prayed for him and spoke very highly of those who labor over against those who sit idle or go begging. Islam teaches that workers should be treated with kindness.¹⁹¹

As the *hadith* quoted above demonstrates, there is no shame in any work, no matter how menial, as long as it is not forbidden or harmful. Treating those in one's employ fairly and humanely with dignity and respect rises to a level of religious duty in Islam.

Professor al-Gama cited in this work. See AL FARUQI & AL BANNA, *supra* note 124, at 12; see also *Biography, Ismail Faruqi Online*, ITTAQULLAH! FOUND., <http://www.ismailfaruqi.com/biography/> (last visited Jan. 2, 2015) (website devoted to Dr. al Faruqi).

¹⁸⁴ AL FARUQI & AL BANNA, *supra* note 124, at 12.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 12–13 (alteration in original) (citing the Qur'anic verse that states work is a blessing: "That men may eat of its fruits and of what their hands have produced. For this, ought they not to be grateful?" Also citing to the *Sunnah* (example) of the Prophet (P.B.U.H.) in that he worked all his life, sometimes engaging in manual labor, and the *hadith* wherein the Prophet (P.B.U.H.) counseled the poor to seek work rather than rely upon charity).

¹⁹⁰ *Id.* at 13–14.

¹⁹¹ See *infra* APPENDIX. See generally AL FARUQI & AL BANNA, *supra* note 124.

In fact, failure to do so is punishable by eternity in hell.¹⁹² Equality, human dignity, and the emphasis on the dignity of workers all provide background and a foundation for the expression of these values in labor laws and practices compatible with Islamic law.

It is in this spirit that Islam demands that all workers be paid fairly according to their work. Workers cannot be expected to work without compensation, and that compensation must be just and according to the skill of the worker and the task assigned.¹⁹³ In making this point, Professor al Faruqi states the following:

Islam teaches that no human effort will go unreckoned, unrewarded if good, unpunished if evil. More specifically, it teaches that worldly work will receive its due, and no less than its due; that "every worker shall receive the advantage of his own work without injustice." In accordance with the Quranic injunction, "Do not reduce what is due [to the worker]", Islamic law prescribed that all work must be paid what it is worth even if the worker has agreed to do same for less, for whatever reason. Justice requires that the reward of work be neither devalued nor overvalued, thus equal work must under the Islamic ethic be rewarded equally.¹⁹⁴

In this vein, Professor al Faruqi argues that workers are entitled to "a decent standard of living."¹⁹⁵ Although this argument is made in the context of the state's responsibility to ensure that all of its citizens are treated with dignity, the responsibility of the employer to pay a fair wage is also implied. He states, "Since God has endowed man with dignity and raised him above all creatures including the angels, that dignity should not be violated through poverty or wages inadequate to meet his dependents' and his basic needs."¹⁹⁶

2. Fair Treatment of Workers and Servants

There are a number of *ahadith* that deal with the fair treatment of workers, employees, and servants. The following famous *hadith* regarding the prompt payment of workers is also

¹⁹² See *id.*

¹⁹³ AL FARUQI & AL BANNA, *supra* note 124, at 15.

¹⁹⁴ *Id.* (alteration in original) (footnotes omitted).

¹⁹⁵ *Id.* at 18.

¹⁹⁶ *Id.* (footnote omitted).

used to advocate for fair wages: "Give a servant his fee before his sweat dries."¹⁹⁷ The requirement of paying workers fair wages is so important that should an employer fail to do so, the employer will be punished in the afterlife. The following *hadith* states:

God Most High said: I shall be the opponent of three people on the day of judgment: the man to whom I gave generously but then he cheated; the man who sold a freeman into slavery and ate up its price, and the man who hired a worker and took his due measure from him but did not pay him his (fair) wages.¹⁹⁸

In addition, there are specific rules that require certain fees for certain jobs, and require that the fee be stipulated before the laborer begins working.¹⁹⁹

It is important to note the context of the society in which these passages were revealed and *ahadith* recorded.²⁰⁰ The economy was based on trade and agriculture.²⁰¹ As in many

¹⁹⁷ Ragheb Elsergany, *Rights of Slaves and Workers in Islamic Civilization*, ISLAM STORY (July 26, 2010, 2:15 PM), <http://islamstory.com/en/node/27359> (narrated by Ibn Majah on the authority of Abdullah ibn Umar (Hadith No. 2443)).

¹⁹⁸ MOHAMMAD HASHIM KAMALI, RIGHT TO EDUCATION, WORK, AND WELFARE IN ISLAM 152 (2010). This *hadith* is recorded in multiple *hadith* collections. See, e.g., AL-BUKHARI, *supra* note 1 ("Allah says, 'I will be against three persons on the Day of Resurrection . . . [a]nd one who employs a laborer and gets the full work done by him but does not pay him his wages.'"); Muzammil Saddiqi, *Fatwa Bank, Living Shari'ah*, ISLAMONLINE.NET, https://web.archive.org/web/20110222155047/http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1155193577227 (last visited Jan. 2, 2015).

¹⁹⁹ See AHMAD IBN NAQIB AL-MISRI, RELIANCE OF THE TRAVELLER: THE CLASSICAL MANUAL OF ISLAMIC SACRED LAW 'UMDAT AL-SALIK, at k.26, 445-46 (Nuh Ha Mim Keller ed., trans., rev. ed. 1994).

²⁰⁰ Once again, the author is not advocating the position that the Qur'an and Sunnah should be seen as historical rather than sacred sources. However, the term "slave" is a term that is often translated as "servant," or "worker" in the contemporary literature regarding the fair treatment of workers. The author believes this is appropriate because slavery has now been abolished in all nations. The abolition of slavery is supported even by very conservative traditionalist scholars. See generally Elsergany, *supra* note 197. But see Mohammad Omar Farooq, *Fundamental Human Dignity and the Mathematics of Slavery*, GLOBALWEBPOST (June 2006), http://www.globalwebpost.com/farooqm/writings/islamic/slavery_math.html (discussing the few *fata'wa* issued by scholars in modern times that promote slavery). In addition, there is a strong argument that the Prophet (P.B.U.H.) was against slavery and would have supported its abolition had that been feasible in the seventh century. This argument is grounded not only in the Sunnah, but also in the underlying principles of Islam in general and Shari'ah in particular, which are universal and timeless.

²⁰¹ See AHMED A.F. EL-ASHKER & RODNEY WILSON, ISLAMIC ECONOMICS: A SHORT HISTORY 170 (2006).

societies at the time, slavery was a common practice.²⁰² Although every modern Muslim state and scholar has condemned slavery,²⁰³ certain passages relating to the treatment of slaves can also serve as a base-line or an analogy for the fair treatment of workers. Moreover, in the West, employment law grew from the law of “master and servant.” Until recently, in Europe and in the United States, there were many different levels or classes of workers. There were slaves, indentured servants, bondsmen, apprentices, peasants tied to the land, tenant farmers, apprentices, household servants, and wage paid employees. The terms servant and slave are sometimes used interchangeably in the Qur’an and *ahadith*, and it is often difficult to determine the exact status of persons mentioned in a *hadith*. Nevertheless, basic rules regarding the proper treatment of slaves—which are not clearly conditioned on their condition of indenture—are applicable by analogy to the proper treatment of servants and thus employees as well.

Although the Prophet (P.B.U.H.) owned slaves, he encouraged their fair and just treatment and encouraged the freeing of slaves whenever possible. He stated, “[t]o free a slave is an act of worship.”²⁰⁴ Slaves were to be given *zakat* in order to

²⁰² See Bernard K. Freamon, *Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence*, 11 HARV. HUM. RTS. J. 1, 6–7 (1998) (describing *Shari’ah*’s definition of slavery).

²⁰³ *Id.* at 5.

²⁰⁴ NAQIB AL-MISRI, *supra* note 199, at 458; see, e.g., Abu Amina Elias, *Hadith on Marriage: The Virtue of a Man Who Frees His Slave-Girl and Then Marries Her*, DAILY HADITH ONLINE (Aug. 6 2012), <http://www.dailyhadithonline.com/2012/08/06/hadith-on-marriage-the-virtue-of-a-man-who-frees-his-slave-girl-and-then-marries-her/> (“Abu Musa reported: The Messenger of Allah, peace and blessings be upon him, said, ‘Whoever frees his slave-girl and then marries her will have a double reward.’” (emphasis removed)); *Number 286, Book 65, Volume 7, Sahih Bukhari*, WORLD OF ISLAM PORTAL, http://hadith.worldofislam.info/index.php?page=sahih_bukhari/book_65 (last visited Jan. 2, 2015) (“Narrated Abu Musa Al-Ash’ari: The Prophet said, ‘Give food to the hungry, pay a visit to the sick and release (set free) the one in captivity (by paying his ransom)’”).

And let those who find not the financial means for marriage keep themselves chaste, until Allaah enriches them of His Bounty. And such of your slaves as seek a writing (of emancipation), give them such writing, if you know that they are good and trustworthy. And give them something yourselves out of the wealth of Allaah which He has bestowed upon you. And force not your maids to prostitution, if they desire chastity, in order that you may make a gain in the (perishable) goods of this worldly life. But if anyone compels them (to prostitution), then after such compulsion, Allaah is Oft-Forgiving, Most Merciful (to those women, i.e. He will forgive them because they have been forced to do this evil action unwillingly).

purchase their own freedom.²⁰⁵ He also encouraged the slaveholder to allow slaves basic human rights, such as time to practice their religion, to marry, and to care for their children.²⁰⁶ Most importantly for the present discussion, he encouraged the slaveholder to treat the slaves as members of the family.²⁰⁷

The treatment of slaves can be considered a base-line when discussing the other rules that relate to worker's rights under both classical Islamic law and in modern societies. For example, a famous *hadith* regarding the treatment of slaves, sometimes translated as servants, is as follows: "If you reduce your slave's tasks, a reward will be added to your book of deeds in the Day of Resurrection."²⁰⁸ The following *hadith*, which mentions slaves, is also often quoted to advocate for the fair treatment of workers:

Your slaves are your brothers and Allah has put [sic] them under your command. So whoever has a brother under his command should feed him of what he eats and dress him of what he wears. Do not ask them (slaves) to do things beyond their capacity (power) and if you do so, then help them.²⁰⁹

All the passages relating to the fair and just treatment of slaves are analogous to the fair and just treatment of workers. The law is very clear regarding payment of fair, prompt, and decent wages, and not burdening the workers beyond their capacity.²¹⁰ In short, Islamic *Shari'ah* provides a framework for protecting the human dignity of workers, and this is tied to their right to a fair wage.

3. Protection of the Weaker Members of Society

In addition to providing guidelines for the treatment of workers and servants, Islam also teaches that all those who are in a weak or disadvantaged position should be cared for and

MUHAMMAD MUHSIN KHAN, ENGLISH TRANSLATION OF THE QUR'AN 24:33 (2012).

²⁰⁵ See Ragheb Elsergany, *Freedom of Slaves Emancipation in Islam*, INVESTIGATE ISLAM (July 18, 2012, 11:23 AM), <http://investigate-islam.com/?p=729>.

²⁰⁶ See Elsergany, *supra* note 197.

²⁰⁷ See *id.*

²⁰⁸ See *supra* note 2. Narrated by Ibn Hibban on the authority of Amr ibn Hurayrah, ch. of *Al-Byu'* (sales) (1472).

²⁰⁹ See *supra* note 2. Narrated by Al-Bukhari, chapter of *al-Iman* (faith) (30), and Muslim, ch. of *Al-Iyman wa Al-Nuzur* (oath) (1661).

²¹⁰ See *supra* note 2. Narrated by Al-Bukhari, chapter of *al-Iman* (faith) (30), and Muslim, ch. of *Al-Iyman wa Al-Nuzur* (oath) (1661).

treated fairly.²¹¹ These passages can also be used to support the rights of workers to fair wages as workers are generally in a weaker position than their employers, and will be subject to financial strain—if not poverty—if the employers do not pay them wages that are sufficient to support their needs. Poverty is taken very seriously in Islam.²¹² In fact, one of the possible defenses to a charge of theft is poverty. If a man steals to support his family and it is proven that he is so poor that he had no other real choice, then he will be acquitted of the charge.²¹³ The fact that a member of the society has had to resort to this crime in order to survive is seen as a failure of the society as a whole.

The emphasis on social justice in Islam is also reflected in the directives that protect orphans. The Prophet (P.B.U.H.) Muhammad was himself an orphan.²¹⁴ He was born into a tribal society where anyone who was not protected by one's own family and tribe was at risk of extreme poverty and possible early death.²¹⁵ His experience as an orphan was likely instrumental in his appreciation of the importance of the Revelations that led to a new social prescription that encouraged the protection of all the weaker members of society—regardless of whether they were related by blood or tribal affinity.²¹⁶ The revelations regarding the treatment of orphans make clear that the weaker members of society are to be protected. For example, the Qur'an states that orphans should not be taken advantage of by more powerful persons. It states: "To orphans restore their property / (When

²¹¹ See *supra* note 2. Narrated by Al-Bukhari, chapter of *al-Iman* (faith) (30), and Muslim, ch. of *Al-Iyman wa Al-Nuzur* (oath) (1661).

²¹² Poverty in itself is not considered a state to be admired. The accumulation of wealth is not a sin, and the seeking of profit is encouraged. However, the accumulation of excess wealth is not admirable. Wealth should be circulated for the good of society. The *zakat* payment is one way in which this is to be accomplished.

²¹³ DOI, *supra* note 73, at 389.

²¹⁴ NIKKI R. KEDDIE, *WOMEN IN THE MIDDLE EAST: A HISTORY* 20 (2006).

²¹⁵ See JOHN L. ESPOSITO, *ISLAM: THE STRAIGHT PATH* 5–6 (rev. 3d ed. 2005).

²¹⁶ The author is not endorsing the highly criticized Orientalist perspective on Islam, which seeks to place Islam and Islamic law in a strictly social and historical context, ignoring the Divine and timeless nature of the Revelations. The author is, however, suggesting that the life experiences of the Prophet and these historical and social contexts of the revelation were, perhaps, intended to uniquely prepare the Prophet to receive the Revelations.

they reach their age), / Nor substitute (your) worthless things / For (their) good ones; and devour not / Their substance (by mixing it up) / With your own. For this is / Indeed a great sin."²¹⁷

Widows also occupied precarious positions in Arabia prior to the Revelation. Due to the constant blood-feuding and raiding among the tribes, the death of young men was common.²¹⁸ This left the widows without protection or provision. The rules of inheritance excluded women prior to the Revelation, and men were reluctant to marry widows.²¹⁹ After the revelations regarding widows were revealed to Muhammad, the widows were entitled to a share of their husbands' estates, and men were encouraged to marry widowed women.²²⁰

²¹⁷ QUR'AN, *supra* note 126, at 4:2.

If ye fear that ye shall not / Be able to deal justly / With the orphans, / Marry women of your choice, / Two, or three, or four; / But if ye fear that ye shall not / Be able to deal justly (with them), / Then only one, or (a captive) / That your right hands possess. / That will be more suitable, / To prevent you / From doing injustice.

Id. at 4:3. This verse was revealed following a time of warfare when there were many widows and orphans in society. *See id.* at 4:5 ("To those weak of understanding / Make not over your property, / Which Allah hath made / A means of support for you, / But feed and clothe them / Therewith, and speak to them / Words of kindness and justice.").

Make trial of orphans / Until they reach the age / Of marriage; if then ye find / Sound judgment in them, / Release their property to them; / But consume it not wastefully, / Nor in haste against their growing / up. / If the guardian is well-off, / Let him claim no remuneration, / But if he is poor, let him / Have for himself what is / Just and reasonable. / When ye release their property / To them, take witnesses / In their presence: / But all-sufficient / Is Allah in taking account.

Id. at 4:6; *see also id.* at 4:10 ("Those who unjustly / Eat up the property / Of orphans, eat up / A fire into their own / Bodies: they will soon / Be enduring a blazing Fire!").

And (remember) what hath / Been rehearsed unto you / In the Book, concerning / The orphans of woman to / whom / Ye give not the portions / Prescribed, and yet whom ye / Desire to marry, as also / Concerning the children / Who are weak and oppressed; / That ye stand firm / For justice to orphans. / There is not a good deed / Which ye do, but Allah / Is well-acquainted therewith.

Id. at 4:127; *see also id.* at 17:34 ("Come not nigh / To the orphan's property / Except to improve it, / Until he attains the age / Of full strength: and fulfil / (Every) engagement, / For (every) engagement / Will be enquired into / (On the Day of Reckoning).").

²¹⁸ *See KEDDIE, supra* note 214, at 51.

²¹⁹ *See id.* at 36.

²²⁰ *See id.* at 19.

In addition to requiring fair treatment of workers, the poor, widows, and orphans, Islam also requires business relations to be fair and equitable. There are a number of passages in the Qur'an, and there are several *ahadith* that deal with commercial relations and fair dealing. Islamic commercial law is a highly developed field, and equitable relations and fair dealing are religious duties. Even contract law is raised to the level of religious law. As discussed previously, the authority used to support the bans on *riba* and *gharar* are rooted in Islamic views of social justice and fair dealing. These passages show that a just society is also a society that has ethical business practices. It is a sin to press economic advantage in business relations. Economic justice extends to business relations, and business relations include making a fair contract in hiring an employee.

B. Modern Scholars and Sources

1. Mohammad Hashim Kamali on Workers' Rights

Muhammad Hashim Kamali is an Islamic reformer and advocate of the application of *Siyyasa Shari'ah* and modern *ijtihad* in reinterpreting the classical *fiqh* in light of current conditions.²²¹ He advocates for an emphasis not on the classical writings of the scholars, but on the purposes underlying *Shari'ah* and the Revelation. He proposes a stronger emphasis on the tertiary sources of *fiqh* such as *marsalah*, a search for the public good.²²²

In his recent book, *Right to Education, Work & Welfare in Islam*,²²³ Kamali includes a chapter on workers' rights. In it he discusses the right to employment, the right to fair wages, the right to obtain payment for accident and loss, and the right to "a fair work regime and leisure."²²⁴ Kamali begins by discussing the responsibility of the state and the community, as the vice regents of G-d, to ensure that the economy provides for maximum employment by ensuring that the population has proper access to training and education and the other tools necessary to find

²²¹ See Mohammad Hashim Kamali, *A Shari'ah Analysis of Issues in Islamic Leasing*, 20 J.KAU: ISLAMIC ECON. 3, 3 (2007).

²²² See Mohammad Hashim Kamali, *Source, Nature, and Objectives of the Shari'ah*, 33 THE ISLAMIC Q. 215, 230 (1989).

²²³ KAMALI, *supra* note 198, at 147.

²²⁴ *Id.* at 147; see also *id.* at 147-73.

employment.²²⁵ He then moves to the topic of fair wages under Islamic law. In this section, Kamali makes a compelling argument based on the Qur'an, *Sunnah*, and *fiqh* that workers are entitled to fair wages. He states, "Any attempt on the part of the employer to deprive the worker of a fair wage, or even to unduly delay it, is a transgression."²²⁶ Employment, according to Kamali, involves rights, duties, and responsibilities for both the employer and the employee. Both have the duty to negotiate the wages in good faith. The worker has the responsibility to fulfill its duties scrupulously, and the employer has the duty to pay the worker promptly.²²⁷ Kamali also states that it is the duty of the market inspector to make sure that the "workers are paid their fair wages and that the employers are not oppressive to them."²²⁸ He compares paying a worker less than the worker is due to "extortion and exploitation of the sort that the Qur'an has clearly forbidden."²²⁹ Kamali supports his argument with the following verses from the Qur'an: "And withhold not from the people that which they are entitled to have."²³⁰ "Whosoever does work of an atom's weight shall see its reward. . . ."²³¹ Kamali then tackles the question of how to determine a fair wage. Kamali states, "Broadly speaking, a worker remuneration must be sufficient to cover his needs for essentials, including food, clothing and accommodation that is deemed suitable for him and his peers."²³² Clearly, Kamali is advocating that a fair wage is a "living wage" at the very least—one that covers essentials. In support of this statement, Kamali quotes the following *hadith*: "Whoever is working for us but has no dwelling, let him be provided with a dwelling. If he has no spouse, let him get married. If he has no servant, let him get one. If he has no riding beast, let him be provided with one."²³³ Here, Kamali observes that the Prophet (P.B.U.H.) was speaking in his role as head of state, and this *hadith* not only supports the requirement of employers to provide a living wage, but also points to the responsibility of the state to

²²⁵ *Id.* at 147.

²²⁶ *Id.* at 149.

²²⁷ *Id.* at 149–50.

²²⁸ *Id.* at 150.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.* (alteration in original).

²³² *Id.*

²³³ *Id.* at 151.

make conditions favorable for the workers through long-term benefit schemes and infrastructure that today would include public transportation and the availability of affordable housing.²³⁴ Kamali devotes a chapter in this work to the responsibility of the state to provide a social safety net for the people.²³⁵

Assuring that workers have adequate pay, leisure, healthcare, and proper safe working conditions is in part the responsibility of the state, which might be required to enforce a minimum pay scale if the employers are not paying fair wages. Kamali, however, is generally not in favor of the state setting pay scales and would prefer that market conditions, such as supply and demand for labor, determine wages.²³⁶ However, where the employers pay less than a living wage due to their superior bargaining power in a society, such as ours, where the distribution of income is extremely uneven, the government should impose a minimum wage. Kamali also believes that Islam supports the right of workers to form associations, or labor unions, in order to more effectively bargain for good wages and working conditions in the interest of justice.²³⁷

2. Gamal al Banna and the Arab Labor Movement

Dr. Gamal al Banna was born in Egypt in 1920.²³⁸ He became a renowned scholar, writing a number of books relating to the international labor movements, and founded the Arab labor movement.²³⁹ His works are difficult to find in U.S. libraries, even though many have been translated into English, or were written in English.

Trade unions as we know them in contemporary society did not exist during the time of the classical scholars, nor were the concepts of a set minimum wage or standardized labor practices based on codes. Although there were guilds in the early era of Islamic society,²⁴⁰ and they may be considered the forerunners of

²³⁴ *Id.*

²³⁵ *See id.* at 189–260.

²³⁶ *Id.* at 158.

²³⁷ *Id.* at 173–74.

²³⁸ Michael Slackman, *A Voice for 'New Understanding' of Islam*, N.Y. TIMES (Oct. 20, 2006), <http://www.nytimes.com/2006/10/20/world/africa/20iht-profile.3237674.html?pagewanted=all>.

²³⁹ *Id.*

²⁴⁰ *See* Bernard Lewis, *The Islamic Guilds*, 8 ECON. HIST. REV. 20, 20–23 (1937).

the modern labor unions, classical scholars did not address the role of those guilds in representing workers in employment contracts for that was not their role. Accordingly, this is one of the examples of changes in society that cannot be addressed by the process of *taqlid*. Contemporary scholars who apply *ijtihad* must therefore examine the role trade unions play in Islam. Few contemporary scholars have addressed themselves to the international or Islamic labor movement.

A full discussion of that movement is beyond the scope of this Article. However, because trade unions facilitate the negotiation of a fair wage, which is clearly required by *Shari'ah* and classical *fiqh*, under the doctrine of promoting the good, trade unions should be promoted in Islam and by companies that claim to be *Shari'ah*-compliant. The role of trade unions is so closely intertwined with the promotion of a just and dignified life for workers that not only should companies that claim to be *Shari'ah*-compliant be scrupulous in their dealings with individual workers, they should promote the formation of trade unions and given a choice to contract with other companies that have unionized work forces. Although this might not guarantee that the workers in those companies are being treated as fairly as is required by *Shari'ah*, it is more likely that a unionized workforce, with collective bargaining power, will have negotiated a living wage. Just as companies that claim to be *Shari'ah*-compliant must examine all their investments to make sure they are not promoting the sale of *haram* products, or even remotely engaging in *gharar* or *riba*, they should so examine the labor practices of their trading partners. The following is a description of the arguments put forth by leading contemporary scholars who have commented on the importance of workers' rights under *Shari'ah*.

Dr. Ismail al Faruqi and Dr. Gamal al Banna, in *Towards Islamic Labour & Unionism*,²⁴¹ both support the idea that payment of fair wages is essential to conducting business in an appropriate Islamic manner, in accordance with *Shari'ah*.²⁴² Gamal al Banna was instrumental in founding the International Islamic labor movement.²⁴³ Placing unionism squarely within the

²⁴¹ AL FARUQI & AL BANNA, *supra* note 124.

²⁴² *See id.* at 74.

²⁴³ Having written numerous books and articles on Islam and Unionism, he is relatively unknown in the West, and most of his works are not translated into

framework of Islamic discourse on the rights of workers in *Shari'ah*, Dr. al Banna's work remains the intellectual basis for Islamic unionism. Unfortunately, that movement died in its infancy, due in part to the usurpation of the fledgling unions in several Arab states by the government, and by the internal power struggles of the unions themselves. Nevertheless, his work remains important as one of the few Islamic thinkers to have published contemporaneously regarding the rights of workers in Islamic states and under *Shari'ah*.²⁴⁴ Dr. al Banna argues that if the purpose of the unions is to secure justice for the workers in an Islamic framework, then that purpose is equivalent to the purpose of Islam—justice.²⁴⁵

In his paper on Islam and trade unions, al Banna argues that Islam demands justice for workers, particularly that Islam "recognizes the right of the people to a decent life without hunger or fear."²⁴⁶ He supports this proposition by relying on the following verse: "Let them adore the Lord of this house who provides them with food against hunger and with security against fear."²⁴⁷ Dr. al Banna makes a strong argument that when the interests of the poor are juxtaposed with those of the rich, Islam stands with the poor.²⁴⁸ He points out that *zakat* is one of the duties imposed on the rich for the redistribution of wealth in society for the benefit of the poor.²⁴⁹ He also points out that the Prophet (P.B.U.H.) chose to be poor all his life and that

English. See *id.* at 59–61 (discussing Dr. al Banna's contribution to the Islamic labor movement and a summary of his works).

²⁴⁴ See *id.* at 63–64 (discussing the aversion of Muslim thinkers to write about labor unions and the vacuum left in the Islamic literature as a result).

²⁴⁵ Dr. al Faruqi and Dr. al Banna write:

If the primary aim of islam [sic] is Justice, then this is the primary aim of trade unions too.

Why? Because Islam is not a religion of worship and prayer only, it has its own social, economic and political rules and principles which are considered an integral part of Islam. Prohibiting despotism and usury (ALRIBA), . . . imposing AL SHURA and ALZAKAT (1) . . . are a few, but clear, examples of Islamic principles in politics and economics.

Such a universal religion must have Justice as its supreme aim. Justice is the only principle that can be a basis for social, economic, and political order to which mankind can subscribe. Justice is the supreme social virtue, the virtue of virtues, and should be the aim of all societies, in all ages.

Id. at 67–68.

²⁴⁶ *Id.* at 68.

²⁴⁷ *Id.* (quoting the *Sura al-Quraish*).

²⁴⁸ *Id.* at 69.

²⁴⁹ *Id.*

he once became extremely embarrassed when he saw a group of poor Arabs wearing tattered clothes.²⁵⁰ These examples of the life of the Prophet (P.B.U.H.) can be taken as further evidence that Islam requires a minimum of social justice, and that all people deserve a share of the resources of society to be able to maintain a decent life. Employers must fulfill their responsibility in this regard by paying fair wages, even if the economy might be such that they are able to hire workers at starvation wages.

Dr. al Banna further argues that the contract between workers and employers is inherently unfair in that it involves parties with extremely unequal bargaining power, and thus is not cognizable under Islamic law.²⁵¹ He states:

When we consider the contract as between employer and worker; it is clear that the worker cannot be an equal to the employer, also he never has the real freedom, even if he has the legal or formal one. The worker must eat and support his family—usually a big one—he has no means of subsistence but his power to work, and so he is obliged to work on the employer's terms. He has no say, not only because he is not equal and is under great pressure, but also because in such cases there is no mutual bargaining. There is a written contract. The worker must sign it if he wishes to be appointed. He cannot modify or adjust anything and must take or leave the contract as a whole. Since he is obliged to work, having no alternative, he accepts the contract however unfair it might be. Such contracts are legally called "Submission Contracts". They do not conform to Islam.²⁵²

Although al Banna did not write about workers' rights in the context of the modern *Shari'ah*-compliant business and finance movement, the principles of Islamic contracts and the rights of workers are clearly transferable to this phenomenon.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 75.

²⁵² *Id.* (relying upon the works of Adel Kader Oda, Mohamad Assad, and verse 282 of the QUR'AN).

3. International Labor and Human Rights Standards

In addition to relying upon the traditional sources of Islamic *fiqh*, some contemporary scholars also derive arguments from international labor and human rights standards.²⁵³ Although there has been some controversy regarding the acceptance of treaties and declarations that are clearly based on Eurocentric notions of the nature of law and human rights, the basic principles enshrined by these sources with regard to workers' rights to fair wages are compatible with *Shari'ah*. Many Muslim majority nations that claim not to recognize any law that is not compatible with *Shari'ah* have signed international labor treaties and human rights declarations.²⁵⁴

Although international law as we know it today was not developed in the early era of the Muslim caliphs, there is support in *Shari'ah* for the recognition of treaties and the basic purposes of international law. In fact, some scholars claim that it was the Muslims, after the advent of Islam, who "were the first to accord a dignified place to international relations in the *Shari'ah*."²⁵⁵ According to Professor Doi, in this early period "there came into being both rights and obligations in international relations that developed as a branch of study into an independent science known as *as-siyar*. It made no discrimination between foreigners and dealt equitably with non-Muslim states all over the world."²⁵⁶ While there were no international declarations regarding proper conduct of war, the treatment of workers, or the like, there was recognition of the rights of sovereigns and the engagement of the leaders of the Muslim community with other states; one can safely state that international agreements may be included as a source of *Shari'ah*.²⁵⁷ In fact, the basis of Islamic international

²⁵³ See, e.g., ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 137–60 (1996) (discussing *Shari'ah* and international law); Anver M. Emon et al., *Editors' Introduction—From 'Common Ground' to 'Clearing Ground': A Model for Engagement in the 21st Century*, in ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: SEARCHING FOR COMMON GROUND? 1, 2 (Anver M. Emon et al. eds., 2012).

²⁵⁴ Kathleen Cavanaugh, *Narrating Law*, in ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: SEARCHING FOR COMMON GROUND? 17, 35–36 (Anver M. Emon et al. eds., 2012).

²⁵⁵ DOI, *supra* note 73, at 640.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 644.

law was formed during the second century after the *hijra*. In the ninth century, the founder of the *Hanafi* school of thought, Iman Hanifa, delivered a series of lectures on international law.²⁵⁸ These were recorded by his student, who was himself a noted scholar and diplomat of the Abbasid caliphate.²⁵⁹ Thus, Iman Hanifa's work came to be preserved in several books that are arguably the first texts to deal exclusively with what would become international law.²⁶⁰

Furthermore, some aspects of international law are based on the customs of the international community—international customary law. *Urf*, or custom, is a unanimously recognized source of *Shari'ah*—as long as it does not contradict the principles of Islam and *Shari'ah*.²⁶¹ As discussed below, the principles of international law that preserve the right to work, the right to a fair wage, and the right to equal treatment are compatible with *Shari'ah*. Thus, these works, both the conventional and Islamic alternatives, can be used as a source of *Shari'ah* to advocate for the rights of workers and, ultimately to argue that *Shari'ah*-compliant companies must treat their workers fairly.

The right to work is recognized in a number of international conventions, treaties, and declarations. The United Nations Declaration of Human Rights (1948) states in Article 23:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

²⁵⁸ *Id.* at 641.

²⁵⁹ *Id.* (describing the works of Imam Muhammad ibn al-Hasan ash-Shaybani).

²⁶⁰ *Id.* Doi also discusses the influence of Islamic international law on later European writers such as Grotius, Puffendorf, Bellow, Ayala, Victoria, and Gentiles. *Id.* at 641–42 (citing ANWAR AHMED QADRI, ISLAMIC JURISPRUDENCE IN THE MODERN WORLD 277–78 (1973)).

²⁶¹ BHALA, *supra* note 4, at 340.

4. Everyone has the right to form and to join trade unions for the protection of his interests.²⁶²

Likewise, Article 25 provides:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.²⁶³

Thus, the most famous international statement of human rights embraces the *Shari'ah* perspective on the importance of paying workers a fair wage.

The International Covenant on Economic, Social and Cultural Rights also recognizes the right of workers to be paid a fair wage. Article 6, *The Right to Work*, provides that workers have the right to employment.²⁶⁴ The work that is protected by Article 6, is interpreted in light of Article 7, which requires that the workers have “just and favourable” working conditions.²⁶⁵ Just and favorable working conditions are interpreted to include a fair wage.²⁶⁶

Similarly, the International Labour Organisation stated the following regarding the rights of workers to a minimum wage:

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include—

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

²⁶² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 23 (Dec. 10, 1948).

²⁶³ *Id.* at 25.

²⁶⁴ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/217(XXI), at 6 (Dec. 16, 1966).

²⁶⁵ *Id.* at 7.

²⁶⁶ BADRIA AL-AWADHI, HUMAN RIGHTS IN INTERNATIONAL LAW AND ISLAMIC PERSPECTIVES 28 (2012).

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.²⁶⁷

In addition to these global conventions, there are a number of area-specific conventions and declarations that support the *Shari'ah* perspective on the rights of workers. For example, the American Declaration of the Rights and Duties of Man (ADHR) Article XIV provides:

Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.²⁶⁸

Similarly, the European Social Charter (1961) provides the rights of "just conditions of work" and for "fair remuneration," and the right of all workers "to dignity at work."²⁶⁹ Some of these conventions expressly incorporate *Shari'ah* principles, as explained below.

Because conventional international conventions and treaties regarding human rights and labor standards are clearly secular in nature, such as the 1948 United Nations Declaration of Human Rights,²⁷⁰ there are several *Shari'ah*-based alternatives to such declarations and conventions. One of these is the Universal Islamic Declaration of Human Rights.²⁷¹ Article 17 of that Declaration is entitled *Status and Dignity of Workers*, and it states: "Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also

²⁶⁷ Convention (No. 131) Concerning Minimum Wage Fixing, with Special Reference to Developing Countries, International Labour Organisation [ILS], Minimum Wage Fixing Convention (No. 131), art. III, June 3, 1970, 825 U.N.T.S. 77.

²⁶⁸ American Declaration of the Rights and Duties of Man, OEA/Ser.L.V./II.23, doc. 21, rev. 6 (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1, at 17, available at http://www.corteidh.or.cr/docs/libros/docsbas2012_eng.pdf.

²⁶⁹ Council of Europe, European Social Charter (Revised), Part I, May 5, 1996, E.T.S. No. 163.

²⁷⁰ See generally G.A. Res. 217 (III) A, *supra* note 262.

²⁷¹ See generally Islamic Council of Europe [ICE], Universal Islamic Declaration of Human Rights, Sept. 19, 1981, available at http://www.the Khalids.org/index.php?option=com_content&view=article&id=526:universal-islamic-declaration-of-human-rights&catid=39:Newsletter+Archive&Itemid=57.

entitled to adequate rest and leisure.²⁷² Another Islamic human rights declaration is the Cairo Declaration of Human Rights in Islam.²⁷³ The Cairo Declaration contains language regarding the proper treatment of workers that mirrors the language of the 1948 U.N. Declaration of Human Rights. It was adopted by the Organization of Islamic States (OIC) in 1990. Article 13 of the Cairo Declaration states as follows:

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled—without any discrimination between males and females—to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.²⁷⁴

As argued previously, the payment of fair wages to workers is fundamental to a just society, and although unions fulfill many functions, collective bargaining in order to ensure fair wages is instrumental to their pursuit of justice. In that vein, the Constitution of the International Islamic Labour Committee provides in Article 7:

The fundamental dimensions of Labour are:

a: Labour is the principal—almost the only—source of living for the individual, and so wages must secure to the worker a decent living. If his skill does not permit that, it is the responsibility of

²⁷² *Id.* at XVII; The Organisation of the Islamic Conference [OIC], World Conference on Human Rights, Apr. 19–May 7, 1993, *The Cairo Declaration on Human Rights in Islam*, at 13, U.N. Doc. A/CONF.157/PC/62/Add.18, Annex to Res. No. 49/19-P (June 9, 1993) [hereinafter *The Cairo Declaration on Human Rights in Islam*]. Worker's rights are also enshrined in many of the constitutions of Muslim majority states that incorporate to some extent the Islamic *Shari'ah* as a source of law.

²⁷³ See generally *The Cairo Declaration on Human Rights in Islam*, *supra* note 272.

²⁷⁴ *Id.*

the Islamic State to train and retrain the workers to attain the required standard. Pending that, wages must be supplemented from the Islamic Zakh (Social Security).²⁷⁵

The preceding quotation emphasizes the partnership of the Islamic State with both employers and workers in creating the proper atmosphere to ensure just and secure working conditions, as proposed by Kamali and discussed previously. However, the first requirement is that under the prevailing conditions, the employers must provide wages that "secure to the worker a decent living."²⁷⁶ It is only under certain circumstances, such as a fundamental change in the economy, or in an individual case where a worker is unable to perform the duties required for the job, that the state must step in to assist in rectifying the situation. Thus, even though the United States is not an "Islamic State," employers who purport to conduct their businesses in compliance with *Shari'ah* must not exploit the workers by paying the least possible amount in wages that the market will bear. They must pay at least a living wage, as labor is usually the only "source of living for the individual."²⁷⁷

IV. STRATEGIES FOR THE IMPLEMENTATION AND STANDARDIZATION OF *SHARI'AH* COMPLIANCE REGARDING THE FAIR TREATMENT OF WORKERS

A. *The Living Wage Movement*

The living wage movement "seeks to persuade municipalities to adopt ordinances that mandate wage levels capable of keeping a working family at or slightly above the poverty line."²⁷⁸ Those who advocate for living wage laws believe that all workers who are employed full-time should be able to support their families through wages that are above the federally-determined poverty line.²⁷⁹ The particular wage that is to be applied can be

²⁷⁵ AL FARUQI AND AL BANNA, *supra* note 124, at 115.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Michael W. Halpin, Note, *Is the Living Wage Dead in Detroit? The Role of Stare Decisis, Home Rule, and Policy Preferences in the Michigan Supreme Court*, 2009 U. ILL. L. REV. 911, 915 (2009).

²⁷⁹ *Id.* at 914; see also Christopher Beckerson, Recent Cases, *Amaral v. Cintas Corporation: Attacks on Hayward's Living Wage Ordinance Defeated*, 30 BERKELEY J. EMP. & LAB. L. 546, 546 (2009) (discussing the background and impetus of the living wage movement).

determined by the cost of living index of the community and the federal poverty line. The living wage legislation may apply broadly to all businesses in the municipality or more narrowly, for example, providing that all companies accepting contracts with the city must pay their workers the living wage.²⁸⁰ The movement for a living wage has been led by labor unions and other coalitions and advocates that have lobbied local officials to enact living wage laws.²⁸¹ There are at least 140 local government living wage ordinances in the United States.²⁸²

In addition to arguing that full-time workers should be able to support their families on their wages above the poverty line, advocates of the living wage also argue that businesses that pay wages below the federal poverty level benefit not only from cheap labor, but also from indirect government subsidy.²⁸³ They argue such businesses increase public demand for government services for the poor.²⁸⁴ "Living wage supporters contend that businesses benefit from 'municipal subsidization of poverty' because local government, not business, is essentially forced to cover the gap between wages and the poverty rate."²⁸⁵ Under Islamic law, even though the government has a duty to provide basic services for the poor, the employer shares this societal duty through the rule that the employer must pay workers a fair rate for their work. Only when the economic situation is such that people cannot be employed or the employers simply cannot pay a wage high enough to sustain the workers in a decent manner does the government need to take up this duty.²⁸⁶ In other words, businesses cannot rely upon the government to fill the gap between a poverty wage and a fair living wage simply because it is the joint responsibility of all in the community—including the government—to make sure that the poor are cared for.

If a company claims to be truly *Shari'ah*-compliant, it can easily comply with the minimum requirement of paying its workers the living wage by using one of the readily available living wage calculators. Members of the *Shari'ah* supervisory

²⁸⁰ Halpin, *supra* note 278.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.* at 914.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ See KAMALI, *supra* note 198, at 148, 177.

boards or others who issue *fata'wa* on behalf of the business should make sure that the wages paid are at the very least living wages. This, of course, would not guarantee that the company is complying with all of the requirements for the fair treatment of workers, but should a company fail this initial test, it is without a doubt not *Shari'ah*-compliant.

B. Standardization and Oversight

One of the difficulties in the field of Islamic finance and *Shari'ah*-compliant businesses stems from the lack of standardization of the criteria for *Shari'ah* compliance and the lack of oversight by regulatory authorities.²⁸⁷ This, of course, is related to the fact that in Islam, there is no authoritative hierarchical structure that is empowered to speak for the Muslim community. This has led not only to conflicting branches of *fiqh* in the classical era, but also to conflicting standards regarding innovative financing techniques. Although there have been calls for standardization and enforcement, and some efforts in that direction have been made, contemporary Islamic finance and business law is being created organically.²⁸⁸ Nevertheless, there are institutions and individuals that carry persuasive authority in this field. For instance, the Accounting and Auditing Organization for Islamic Financial Institutions ("AAOIFI") has been active in setting some standards in Islamic Accounting.²⁸⁹ It is a well-respected organization, and if it were to issue a statement regarding the fair treatment of workers, it would be heard around the world of Islamic finance and business. There are also famous universities, groups of scholars who work together in research institutions, influential global banks, and financial institutions and academies of *fiqh* that could wield much influence were they to issue statements regarding the requirement of the payment of fair wages to workers in *Shari'ah*-compliant companies.²⁹⁰ In fact, the entire *sukuk* bond market

²⁸⁷ See BHALA, *supra* note 4, at 855 (discussing the challenges inherent in this field and examining the possibility of a central certification authority).

²⁸⁸ *Id.*

²⁸⁹ See *About AAOIFI*, AAOIFI, <http://www.aaofi.com/en/about-aaofi/about-aaofi.html> (last visited Jan. 3, 2015).

²⁹⁰ ALAZHAR EDUC. WEBSITE, https://web.archive.org/web/20140625054702/http://www.alazhar.gov.eg/Default_en.aspx (last visited Jan. 3, 2015); BANK NEGARA MALAYSIA, <http://www.bnm.gov.my/> (last visited Jan. 3, 2015); FIQH COUNCIL OF N. AM., <http://www.fiqhcouncil.org> (last visited Jan. 3, 2015); INST. OF ISLAMIC

crashed after a scholar from the AAOIFI declared a particular form of *sukuk* bonds to be in violation of the prohibitions against *riba* and *gharar*.²⁹¹ Such power, informal as it may be, could be used to move the entire industry in the direction advocated in this Article.

C. Individual and Corporate Responsibility

Whether or not these famous and powerful institutions issue *fata'wa*, statements, or guidelines requiring companies to treat their workers fairly, according to *Shari'ah*, individuals involved in the industry should take personal responsibility. Both the scholars who issue *fata'wa* and sit on the *Shari'ah* supervisory boards and individuals who deal with the institutions that claim to be *Shari'ah*-compliant have a duty to more closely examine the companies. While it may take an expert in both *Shari'ah* and complex finance to understand many of the newer transactions, it does not take an expert to understand the arguments set out in the statement issued by Imam Siddiqi. Nor is the concept of fair treatment of workers a difficult one to grasp or to actualize. Neither the Qur'anic passages nor the *hadith* that deal with the treatment of workers are vague. They clearly require the payment of a living wage, at the very least. Because Islamic finance and business is based on religious law, built on a 1,400-year-old body of religious tradition and jurisprudence, it is simply wrong to ignore the clear dictates of that religious law and delegate all responsibility to designated experts who have shown no interest in any aspect of *Shari'ah* compliance that protects workers.

BANKING & INS., http://www.islamic-banking.com/islamic-jurisprudence.aspx#islamic_fiqh_academy (last visited Jan. 3, 2015); ISLAMIC DEV. BANK, <http://www.isdb.org/irj/portal/anonymous> (last visited Jan. 3, 2015); ISLAMIC FIQH ACAD. (INDIA), http://www.ifa-india.org/english.php?do=home&pageid=Translation_Work (last visited Jan. 3, 2015); ORGANISATION OF ISLAMIC COOPERATION, <http://www.oic-oci.org/home.asp> (last visited Jan. 3, 2015).

²⁹¹ Foster, *supra* note 46 ("The question's pertinence was raised in March last year, when Sheikh Muhammad Taqi Usmani, of the Accounting and Auditing Organization for Islamic Finance Institutions (AAOIFI), a Bahrain-based regulatory institution that sets standards for the global industry, said that 85% of Sukuk, or Islamic bonds, were un-Islamic.").

Islam requires a certain amount of effort by Muslims to understand its requirements. As to trade, the merchant is required to have some rudimentary knowledge of the law. More specifically:

The trader must know the *fiqh* of trade, and each one needs to know precisely enough about monetary transactions to avoid the fatal mistake of usury and the other *haram* transactions, just as the person who enters Islam needs to understand the unitary teaching (*tawhid*) and then must know enough of the prayer to be able to perform it correctly in its time.²⁹²

Furthermore, ignoring such clear directives converts any profit obtained from such ventures into ill-gotten wealth.²⁹³ As discussed previously, such wealth is *haram*. It is *haram* to pay workers less than a living wage.²⁹⁴ Thus, profits derived even in part from unfair labor practices are ill-gotten wealth and therefore *haram*. Companies that claim to be *Shari'ah*-compliant should take their own initiative and set out corporate standards for the fair treatment of workers.²⁹⁵

CONCLUSION:

COMPANIES THAT CLAIM TO BE *SHARI'AH*-COMPLIANT CANNOT IGNORE THE TREATMENT OF THEIR WORKERS

Companies and *Shari'ah* supervisory boards that focus simply on the forms of financial transactions—screening for *riba* and *gharar*—are missing an important ingredient in their analysis—social justice. The Qur'an and the *hadith* give simple and clear directives requiring the fair treatment of workers. In fact, one of the main themes in *Shari'ah* and *fiqh* involves the protection of weaker members of society such as widows, orphans, the poor, and others who are disadvantaged. The fair treatment of these members of society is an aspect of the emphasis on social justice in Islam. Justice in Islam clearly includes economic justice. Thus, in addition to the clear directives that require an employer to treat workers fairly, these

²⁹² DOI, *supra* note 73, at 688.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Cf. Lance A. Compa & Tashia Hinchliffe Darricarrere, *Private Labor Rights Enforcement Through Corporate Codes of Conduct*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 181, 181–98 (Lance A. Compa & Stephen F. Diamond eds., 1996) (discussing corporate responsibility and workers' rights).

other references reinforce the view that workers, who are in relatively weaker positions than employers, must be treated fairly.

The prohibitions against *riba* and *gharar* are also evidence of the overarching duty imposed on Muslims to act with justice toward workers. The purpose of these prohibitions is to protect weaker persons against entering into bargains that unfairly advantage the economically stronger parties. By focusing solely on the forms of the transactions, and not taking into account the treatment of workers, the guarantors of *Shari'ah* compliance miss a very important aspect of Islamic commercial law and *Shari'ah*. In order to be truly *Shari'ah*-compliant, the companies and individuals involved in these transactions must conform to the rules regarding the fair treatment of workers as well as the technicalities of the prohibitions against *riba* and *gharar*. Focusing only on *riba* and *gharar* is like pulling a thread from a cloth without examining the whole cloth. As explained above, the whole cloth of Islam, *Shari'ah*, and Islamic commercial law requires that weaker parties be treated with kindness, respect, and human dignity. A multi-million dollar company that tolerates paying a janitor less than a living wage demonstrates an extreme disregard to the welfare of some of the weaker members of society. As such it cannot be truly *Shari'ah*-compliant.

As the *Shari'ah*-compliant banking, finance, and investment industry expands, criticism by Islamic scholars and clerics can provide pressure on companies that claim to be *Shari'ah*-compliant and on those who judge them to be so and issue *fata'wa* on their behalf. Failing to treat workers with human dignity renders a financial product, bank, or company out of compliance with *Shari'ah*. Scholars who are engaged in deciding whether a company or its services and products are *Shari'ah*-compliant should add an investigation into how the company treats its workers before issuing a *fatwa* announcing that Muslims can invest in these companies with the assurance that they are investing in *Shari'ah*-compliant endeavors.

APPENDIX

FATWA ON FAIR TREATMENT OF WORKERS²⁹⁶

DR. MUZAMMIL H. SIDDIQI

PRESIDENT OF THE FIQH COUNCIL OF NORTH AMERICA

QUESTION:

Respected scholars, *as-salamu 'alaykum*. I would appreciate it if you would kindly write a brief note on the rights of workers in Islam. *Jazakum Allahu khayran*.

ANSWER:

Wa 'alaykum As-Salamu wa Rahmatullahi wa Barakatuh.

In the Name of Allah, Most Gracious, Most Merciful.

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

Dear brother in Islam, we would like to thank you for the great confidence you place in us, and we implore Allah Almighty to help us serve His cause and render our work for His sake.

As far as Islamic *Shari'ah* is concerned, work is an act of worship that has certain rights and duties on the part of the employers and the employees.

Elaborating on this, Dr. Muzammil H. Siddiqi, president of the Fiqh Council of North America, states the following:

Workers' rights issue is a very important topic and it should be discussed in detail by Muslim scholars. There is a great need for developing specific rules and legislations for governments and

²⁹⁶ The following is an excerpt with slight modifications from Dr. Muzammil H. Siddiqi's *fatwa* on the fair treatment of workers in Islam. Muzammil H. Siddiqi, *Rights of Workers in Islam*, MESSAGE OF ISLAM (2012), <http://english.islammessage.com/articledetails.aspx?articleId=3065>; *Rights of Workers in Islam*, ONISLAM (2015), <http://www.onislam.net/english/ask-the-scholar/morals-and-manners/173040-rights-of-workers-in-islam.html?Manners=>.

corporations in the Muslim world. Among Muslim countries, to my knowledge, Pakistan and Iran have some specific rules in this area. The full and proper implementation of these rules is also needed. To explain briefly some basic values and principles related to workers' rights, let me say the following:

Justice and fair dealings are basic values of Islam and they must be always emphasized. No peace and harmony in the society can exist without justice. Justice should be done to all people. What is justice? There are two words used for justice in the Qur'an: *al-'adl* and *al-qist*. *'Adl* is to follow the balanced way, neither going to one extreme nor to another, neither extravagance nor negligence. *Qist* means to recognize that every person and everything in this world has some rights. To give everyone his, her, or its dues is justice. Injustice is to deprive others their dues. Almighty Allah says in the Qur'an: {O you who believe, stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well acquainted with all that you do.} (An-Nisaa' 4:135).

All people are equal. It does not make any difference to what race they belong, what color they have, what country they come from, what their gender is or what their occupation is. Young and old, rich and poor, white and black, citizens or foreigners with legal work permits are all equal; and they all should be respected, honored, and treated equally. Almighty Allah says: {O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full Knowledge and is well acquainted (with all things).} (Al-Hujurat 49:13).

Prophet Muhammad (peace and blessings be upon him) said the following words in his last sermon: "O people, indeed your Lord is one and your father is one. Behold, there is no superiority for an Arab over a non-Arab, nor for a non-Arab over an Arab, nor for a white person over a black

person, nor for a black person over a white person, except through piety." (Musnad Ahmad).

High Regard for Work and Workers

Islam has given high regard for work. Those who work and earn their living by their own labor must be respected. Of course, the work has to be lawful and it should be done in an honest and sincere manner. All anti-social works, irresponsible behavior, and work done with cheating and deception are forbidden in Islam. Employers and employees all must be honest and must deal with each other justly.

On the treatment of workers there are general and specific teachings in Islam. The following five points must be emphasized:

1. Clear and Proper Agreements

All agreements, whether oral or written, must be clear and transparent. The agreements must be just and lawful. Employees should know their duties and responsibilities and they should be told their rights in terms of vacations, leaves, compensations, etc. Allah says in the Qur'an {O you who believe, fulfill your contracts.} (Al-Ma'idah 5:1). The Prophet (peace and blessings be upon him) said, "Muslims must abide by their agreements, unless there is an agreement that makes *halal* what is *haram* or makes *haram* what is *halal*." (At-Tirmidhi). This means that illegal terms and conditions are not valid under Islamic law. It is the duty of both the employers and the employees to fulfill their agreements to the best of their capacities.

2. The Dignity of Workers

Islamic law allows all human beings the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. The workers should be treated with dignity and honor. No work is menial or degrading. Our Prophet (peace and blessings be upon him) kissed the hands of a laborer who showed him his rough hands due to his hard labor. He prayed for him and spoke very highly of those who labor over against those who sit idle or go begging. Islam teaches that workers should be treated with kindness. Allah says {Serve Allah, and make not

any partners with Him in His divinity. Do good to parents, kinsfolk, orphans, those in need, neighbors who are near, neighbors who are strangers, the companion by your side, the way-farer (you meet) and those whom your right hands possess (your workers): for Allah loves not the arrogant, the vainglorious. (Nor) those who are stingy, or enjoin stinginess on others, or hide the bounties which Allah has bestowed on them; for We have prepared, for those who are ungrateful, a humiliating punishment.) (An-Nisaa' 4:36-37).

3. Kindness to Workers

Workers are our brothers and sisters. They are our helpers. We need them; we depend on them for many things that we cannot do for ourselves. Workers should not be given work beyond their capacity. They should have a humane and safe environment for work. They should be compensated if they are injured on the job. They should have time for work and time for themselves and their families. Children or minors should not be used for labor. Women should have proper environment for hijab without jeopardizing the rules of *khalwah* (privacy). They should not be employed in vocations that are unsuitable to their gender, and they must be ensured maternity benefits in their employment. The Prophet Muhammad (peace and blessings be upon him) said, "Your brothers are your responsibility. Allah has made them under your hands. So whosoever has a brother under his hand, let him give him food as he eats and dress as he dresses. Do not give them work that will overburden them and if you give them such task then provide them assistance." (Al-Bukhari).

4. Proper and Timely Wages

Workers should be given proper and just wages. Exploitation of any person is not allowed in Islam. Allah says {To the Madyan people We sent Shu'aib, one of their own brethren. He said: "O my people, worship Allah; you have no other god but Him. Now has come unto you a Clear (Sign) from your Lord. Give just measure and weight, nor withhold from the people the things that are their due; and do no mischief on the earth after it has been set in order: that will be best for you, if you have Faith."} (Al-A'raf 7:85). Allah warns those who take full measure but give less to others: {Woe to those that deal in

fraud. Those who, when they have to receive by measure from men, exact full measure. But when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account? On a Mighty Day. A Day when (all) mankind will stand before the Lord of the Worlds.) (Al-Mutaffifin 83:1-6). Workers should also be paid on time. The Prophet Muhammad (peace and blessings be upon him) said, "Give to the worker his wages before his sweat dries." (Ibn Majah).

5. Freedom To Form Unions

Based on all the above principles, we can also infer that workers in Islam have a right to exercise the freedom of association and the right to form unions. Special trade unions and associations help workers in their work and socialization. They can also help workers to seek justice for their rights and bargaining power to receive proper compensations. However, employers and employees all must fear Allah in the exercise of their rights and duties.